

1993

Julia Lee Askew v. Paul Hardman : Brief of Appellee

Utah Court of Appeals

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Gary A. Dodge; Mark F. James; Kimball, Parr, Waddoups, Brown & Gee; Attorneys for Appellant.
Stephen G. Morgan; Mitchel T. Rice; Morgan & Hansen; Attorneys for Appellee.

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EXHIBIT NO. 930537-CA

IN THE UTAH COURT OF APPEALS

JULIA LEE ASKEW,)	
)	Appeal No. 930537-CA
Plaintiff and Appellant,)	
)	
vs.	)	Priority No. 15
)	
PAUL HARDMAN,)	
)	
Defendant and Appellee.)	

ADDENDUM TO BRIEF OF APPELLEE

Appeal from the Orders/Rulings
of the Fourth District Court of Utah County, State of Utah
Honorable George E. Ballif (Retired); Honorable Lynn W. Davis

Gary A. Dodge
Mark F. James
KIMBALL, PARR, WADDOUPS, BROWN & GEE
185 South State Street, #1300
P.O. Box 11019
Salt Lake City, UT 84147

Attorney for Appellant

Stephen G. Morgan
Mitchel T. Rice
MORGAN & HANSEN
Kearns Building, 6th Floor
136 South Main Street
Salt Lake City, UT 84101

Attorney for Appellee

Mary T. Noonan
Mary T. Noonan
Clerk of the Court

IN THE UTAH COURT OF APPEALS

JULIA LEE ASKEW,)	
)	Appeal No. 930537-CA
Plaintiff and Appellant,)	
)	
vs.)	Priority No. 15
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Defendant and Appellee.)	

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KIMBALL, PARR, WADDOUPS, BROWN & GEE
185 South State Street, #1300
P.O. Box 11019
Salt Lake City, UT 84147

Attorney for Appellant

Stephen G. Morgan
Mitchel T. Rice
MORGAN & HANSEN
Kearns Building, 8th Floor
136 South Main Street
Salt Lake City, UT 84101

Attorney for Appellee

Tab A

Askew v. Hardman

PRIVILEGED LOG OF UTAH FARM BUREAU FILE

	1.	COMPUTER PRINTOUT ON POLICY INFORMATION
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12/03/91 60. SPEED MEMO FROM GREG JOHNSON TO STEVE MORGAN WITH POLICY

Tab B

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

FILED
Fourth Judicial District Court
Utah County
3/20/92
Deputy

JULIA LEE ASKEW

Plaintiff,

Case Number: 910400665

vs.

RULING

PAUL HARDMAN

GEORGE E. BALLIF, JUDGE

Defendant.

This matter came before the Court on plaintiff's motion to compel discovery and for attorney's fees, filed December 11, 1991 and on defendant's motion for protective order, filed December 5, 1991.

The Court, having reviewed the motions and being fully advised, now enters its:

RULING.

The Court denies plaintiff's motion to compel and for attorney's fees in that the request for discovery is overbroad and involves material protected under the attorney work product doctrine pursuant to Rule 26(b)(3), Utah Rules of Civil Procedure. The Court therefore limits discovery to incidents occurring and documents created prior to the accident in issue. Documents prepared subsequent to the accident were prepared by the insurance company, at the instruction of defendant's attorney, in anticipation of litigation.

This ruling is made in accordance with the decision in

2.

Fontaine v. Sunflower Beef Carrier, Inc., 87 F.R.D. 89, 92 (1980)

in which the U.S. District Court held that, in the context of an insurance investigation of an accident,


. . .the anticipation of the filing of a claim is undeniable once an accident has occurred and a person injured or property damaged. This is especially true in today's litigious society. Documents prepared at that time, therefore, are clearly prepared "in anticipation of litigation" and "by or for another . . . party's representative."

In the present case, the documents were prepared by the insurance company at the request of and on behalf of defendant's attorney. They were created in preparation of an approach for defenses against claims filed in conjunction with the accident.

In addition, plaintiff has failed to demonstrate substantial need for the documents in accordance with Rule 26(b)(3), which would overcome the protection of the attorney work product doctrine. Accordingly, a protective order in favor of defendant will be broadly phrased to encompass all items placed in the file and all communications with counsel subsequent to the date of the accident.

Dated at Provo, Utah this 20th day of March, 1992.

BY THE COURT



GEORGE E. BALLIF, JUDGE

cc: Scott F. Young
Stephen G. Morgan

Tab C

Stephen G. Morgan, No. 2315
Attorney for Defendant Paul Hardman
MORGAN & HANSEN
Kearns Building, Eighth Floor
136 South Main Street
Salt Lake City, UT 84101
Telephone: (801) 531-7888

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY
STATE OF UTAH

JULIA LEE ASKEW,	:	
	:	AFFIDAVIT OF GREG
Plaintiff,	:	JOHNSON
	:	
vs.	:	
	:	
PAUL HARDMAN and W. RAYMOND	:	
HARDMAN,	:	
	:	Civil No. 91-0400665
Defendant.	:	Judge Ballif

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

Greg Johnson, being first duly sworn upon oath, deposes
and says that:

1. I am the Claims Manager for Utah Farm Bureau Insurance
Company. I have worked with Stephen G. Morgan as our defense
counsel for over ten years.

2. On or about September 10, 1986, I received from Mr.
Morgan two letters directing me and our Claims Department that
whenever a person claiming to be a Utah Farm Bureau insured is

involved in an accident, such as Paul Hardman in the subject case, a report of claim should be forwarded to such person to complete and that I or one of our claims representatives should take such statements as I or one of our claims representatives deems necessary from said person and any other persons who have information concerning the accident and to use the information obtained as a basis for an investigation on behalf of Mr. Morgan and his law firm to prepare them for potential legal claims that may arise. (Copies of these letters are attached as Exhibit "A").

3. As Claims Manager, I have established a procedure for handling claims involving livestock on the highway. It has been my experience that once a claim is reported that involves livestock on the highway which is allegedly owned by a Utah Farm Bureau insured, I anticipate from that time forward that a claim may be filed in connection with the accident by the insured, or the driver or occupants of the vehicle that came in contact with the livestock. By reason thereof, I have followed the procedure directed by Mr. Morgan as outlined in the foregoing paragraphs and all documents prepared in connection with the file after the claim is filed with Utah Farm Bureau are prepared in anticipation of possible future litigation.

4. Utah Farm Bureau received a Notice of Claim from our insured Paul Hardman on November 21, 1989. Pursuant to Mr. Morgan's direction, a report of claim form was sent to Mr. Hardman to fill out and arrangements were made to take his statement.

5. On Monday, December 2, 1991, I first received notice that the Subpoena Duces Tecum and Notice of Deposition had been served on our Provo office on Friday, November 29, 1991. I advised our attorney, Stephen G. Morgan, on December 3, 1991, that the Subpoena Duces Tecum and Notice of Deposition had been served and requested Mr. Morgan to file a Motion to Quash the Subpoena.

6. I have reviewed the Privilege Log of Utah Farm Bureau's file, attached as Exhibit "B", which descriptively identifies each of the documents in the file. The documents in the file include my mental impressions, opinions and conclusions and my opinion as to the reserves which should be set up on this claim, and the mental impressions, opinions, conclusions and legal strategy of defense counsel, Stephen G. Morgan, as well as other documents, all of which were prepared either as directed by Mr. Morgan or in anticipation of future litigation.

DATED THIS SIXTEENTH DAY OF DECEMBER 1991

SIGNED

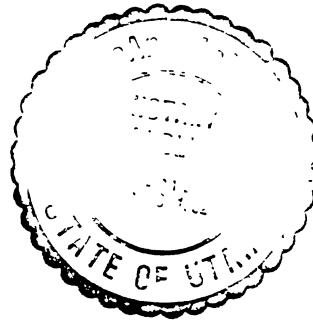
Greg Johnson

ON THIS SIXTEENTH DAY OF DECEMBER, 1991 PERSONALLY APPEARED BEFORE
ME GREG JOHNSON.

John Asher
NOTARY PUBLIC

RESIDING IN SALT LAKE COUNTY
STATE OF UTAH

MY COMMISSION EXPIRES: 01-10-92



Askew v. Hardman

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Tab D

Stephen G. Morgan, No. 2315
Attorney for Defendant Paul Hardman
MORGAN & HANSEN
Kearns Building, Eighth Floor
136 South Main Street
Salt Lake City, UT 84101
Telephone: (801) 531-7888

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY
STATE OF UTAH

JULIA LEE ASKEW,	:	
Plaintiff,	:	AFFIDAVIT OF STEPHEN
	:	G. MORGAN
vs.	:	
	:	
PAUL HARDMAN and W. RAYMOND	:	
HARDMAN,	:	
Defendant.	:	Civil No. 91-0400665
	:	Judge Ballif

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

Stephen G. Morgan, being first duly sworn upon oath,
deposes and says that:

1. I am a member of the Utah State Bar in good standing.
2. I am an attorney for Utah Farm Bureau Insurance
Company. I also represent Paul Hardman in the above-captioned
action.

3. I was notified on Tuesday, December 3, 1991, that the
subpoena duces tecum and notice of deposition had been served in

Provo on Friday, November 29, 1991, and that the claims office in Salt Lake City had been notified on Monday, December 2, 1991. Upon being advised that said subpoena had been served, I prepared a Motion to Quash the Subpoena Duces Tēcum and Motion for Protective Order. These were mailed, postage pre-paid, to Plaintiff's counsel. Because the motions were not completed until about 6:00 p.m., they were not hand-delivered.

4. I intended to call Plaintiff's counsel the next day. However, before I had a chance to do so, Plaintiff's counsel called me about the Motions he had received by mail. I advised Plaintiff's counsel to cancel the reporter because a Utah Farm Bureau representative would not appear and/or produce the entire claim file, which included clearly privileged material, (13 letters between myself and insurer, which involved my mental impressions, conclusions, opinions and legal theories), until such time as the court had an opportunity to rule on the motions.

5. I have represented Utah Farm Bureau Insurance Company for over 20 years. On September 10, 1986, I wrote two letters to Greg Johnson of Utah Farm Bureau, copies of which are attached as Exhibit "A", directing that whenever a person claiming to be a Utah Farm Bureau insured is involved in an accident, such as Paul Hardman in this case, a report of claim should be forwarded to such person to complete and to take such statements from said person and

any other persons who have information concerning the accident as Greg Johnson and/or Utah Farm Bureau deems necessary and to use the information obtained as a basis for an investigation on behalf of me and my law firm to prepare us for potential legal claims that may arise. The purpose of this letter was to protect any statements obtained by Utah Farm Bureau or Greg Johnson from the insured or potential witnesses under the law applicable to attorney work product.

DATED this 16 day of December, 1991.

Stephen G. Morgan
Stephen G. Morgan

In the County of Salt Lake, state of Utah, on this ____ day of August, 1991 before me, the undersigned notary, personally appeared Stephen G. Morgan who is personally know to me to be the person whose name is signed on the preceding document in my presence and who swore or affirmed to me that the signature is voluntary and the document truthful.

My Commission Expires:

1-13-92

Jamie McCormick
Notary Public
Residing in Summit County

LAW OFFICES

MORGAN, SCALLEY & READING

A PROFESSIONAL CORPORATION

SECOND FLOOR

261 EAST 300 SOUTH

SALT LAKE CITY, UTAH 84111

STEPHEN G. MORGAN
FORD G. SCALLEY
J. BRUCE READING
STEVEN K. WALKENHORST
MARK L. ANDERSON
BRAD HOLM
JOHN E. HANSEN
MICHAEL W. SPENCE

TELEPHONE
AREA CODE 801
531-7870

September 10, 1986

Mr. Greg Johnson
Utah Farm Bureau Insurance Co.
5300 South 360 West
Salt Lake City, Utah 84123

Dear Greg:

Pursuant to our telephone conference on September 8, 1986, I have prepared the enclosed letter, the purpose of which is to protect any statements you might obtain from your insured or potential witnesses under the law applicable to attorney work-product.

Sincerely yours,

MORGAN, SCALLEY & READING

Steve

Stephen G. Morgan

pr
enc.

*our statements in our file are our
attorney's work products.*

LAW OFFICES

MORGAN, SCALLEY & READING

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A PROFESSIONAL CORPORATION

SECOND FLOOR

261 EAST 300 SOUTH

SALT LAKE CITY, UTAH 84111

TELEPHONE
AREA CODE 801
531-7870

September 10, 1986

Mr. Greg Johnson
Utah Farm Bureau Insurance Co.
5300 South 360 West
Salt Lake City, Utah 84123

Dear Greg:

Pursuant to your request, I have reviewed the materials that are to be filled out by a Utah Farm Bureau insured who is involved in an accident. When a person claiming to be a Utah Farm Bureau insured is involved in an accident, I am hereby directing you to forward this material to said person and through you, I am instructing said person to complete this material and return it to you. I am further instructing you to receive this information from said person who is involved in an accident and to take such statements from said person and any other persons who have information concerning the accident as you deem necessary and to use the information obtained as the basis for an investigation on behalf of me and this law firm to prepare us for potential legal claims that may arise.

If you have any questions regarding the procedure to follow and the use to which this material may be put, please feel free to contact us.

Sincerely yours,

MORGAN, SCALLEY & READING



Stephen G. Morgan

pr

LAW OFFICES

MORGAN, SCALLEY & READING

A PROFESSIONAL CORPORATION

SECOND FLOOR

261 EAST 300 SOUTH

SALT LAKE CITY, UTAH 84111

September 10, 1986

TELEPHONE
AREA CODE 801
531-7870

STEPHEN G. MORGAN
FORD G. SCALLEY
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Salt Lake City, Utah 84123

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Stephen G. Morgan

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LAW OFFICES

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SECOND FLOOR
261 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84111

TELEPHONE
AREA CODE 801
531-7870

September 10, 1986

Mr. Greg Johnson
Utah Farm Bureau Insurance Co.
5300 South 360 West
Salt Lake City, Utah 84123

Dear Greg:

Pursuant to our telephone conference on September 8, 1986, I have prepared the enclosed letter, the purpose of which is to protect any statements you might obtain from your insured or potential witnesses under the law applicable to attorney work-product.

Sincerely yours,

MORGAN, SCALLEY & READING



Stephen G. Morgan

pr
enc.

*our statements in our letter are our
attorney's work products.*

Tab E

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

** *** **

JULIA LEE ASKEW,
Plaintiff,
-vs-
PAUL HARDMAN,
Defendant.

CIVIL NO. 91-0400665
JUDGE BALLIF
DEPOSITION OF:
PAUL HARDMAN
VOLUME I

** *** **

BE IT REMEMBERED THAT on the 6th of May, 1992, the deposition of PAUL HARDMAN, produced as a witness herein at the instance of the Plaintiff herein, in the above-entitled action now pending in the above-named court, was taken before Deborah F. LaVine, a Certified Shorthand Reporter and Notary Public in and for the State of Utah commencing at the hour of 10:15 a.m. of said day, at the law offices of Kimball, Parr, Waddoups, Brown & Gee, 185 South State Street, Suite 1300, Salt Lake City, Utah;

That said deposition was taken pursuant to Notice.

CERTIFIED COPY



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Reporting Service, Inc.**

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Salt Lake City, Utah 84111
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1 Q. So you consider yourself to be familiar with farm
2 animals?

3 A. Yes.

4 Q. You've been around farm animals?

5 A. Yes.

6 Q. Dealt with them?

7 A. Yes.

8 Q. And those animals would include horses?

9 A. Yes.

10 Q. Do you feel comfortable around horses?

11 A. Yes.

12 Q. How long have you dealt with horses?

13 A. Well, I've had horses, you know, since I was young,
14 again, since my youth. ~ But I've actually probably dealt with
15 horses 15 years.

16 Q. How long have you commercially raised horses or
17 raised horses for resale to others?

18 A. 12 years, give or take, I guess.

19 Q. Do you buy and sell horses, or do you raise the
20 horses you sell, or what is it you do with respect to --

21 A. Mostly raise horses to sell.

22 Q. So you have mares that are bred, and then you sell
23 the colts; is that --

24 A. Yes.

25 Q. Do you consider yourself to be knowledgeable

1 have placed horses in the summer pasture and winter pasture?

2 A. In the summer pasture, I usually put them in there
3 in April -- well, excuse me, February. I leave them there
4 until September or October, depending on the weather
5 conditions, and then I move them to the winter pasture.

6 Q. And leave them there until February again?

7 A. Yes.

8 Q. And do you recall how many years you've been doing
9 this?

10 A. Ever since I've owned horses, that's usually what I
11 do.

12 Q. So you've used these two pastures for many years;
13 would that be fair?

14 A. Yes, uh-huh.

15 Q. And do you recall whether you used this same
16 grazing program in 1989?

17 A. Yes.

18 Q. Placed the horses in the summer pasture early in
19 1989?

20 A. (Witness nods head.)

21 Q. Kept the horses in that pasture until the late
22 summer or fall of '89, and then moved the horses to the winter
23 pasture?

24 A. Yes, uh-huh.

25 Q. Is there a particular breed of horse that you own?

1 A. Paint horses and quarter horses.

2 Q. And do you raise registered horses?

3 A. Yes.

4 Q. Do you own any horses that are not registered?

5 A. I don't, no -- well, yes, I own one. Excuse me.

6 One.

7 Q. Do you have horses that your wife owns in which you
8 have no ownership?

9 A. No.

10 Q. How about horses that any of your children own?

11 A. My son has claim on one horse, yes. The actual
12 owner, that's debatable, I guess.

13 Q. Having been raised on a farm, I understand that.

14 A. Technically, yeah, I guess it's his horse.

15 Q. And in 1989, was that also the case that the horses
16 you own for the most part were registered horses?

17 A. Yes.

18 Q. Also a combination, I take it, of paint and quarter
19 horses?

20 A. Yes.

21 Q. How long have you owned registered horses? Would
22 that differ from --

23 A. No. With the exception of the ones that have
24 that's not registered, all my horses have been registered.

25 Q. Now during 1989, you rented a pasture that is just

1 south of Camp Williams and east of State Road 68; is that
2 correct?

3 A. East of Camp Williams.

4 Q. And a little bit --

5 A. Yes, sir.

6 Q. -- south of the actual location on the top of the
7 hill?

8 A. Yes.

9 Q. And that's the pasture you previously referred to
10 as the winter pasture?

11 A. Yes.

12 Q. And you understand the winter pasture, so we're
13 straight, to be the same pasture that Mr. Young and I visited
14 with you and your attorney some months ago?

15 A. Yes.

16 Q. Now were you renting that pasture as of November
17 20th, 1989?

18 A. Yes.

19 Q. How long have you been renting that pasture?

20 A. Five, six years, actually leasing it, you might
21 say.

22 Q. Leasing it. And was that a year-round lease?

23 A. Yes.

24 Q. And during the period, this five- to six-year
25 period prior to 1989, had you continuously leased that pasture

1 A. Other than that, they had nothing to do with it or
2 they had no authority to get in there or do anything with the
3 pasture.

4 Q. Did you have any agreements or understandings with
5 Camp Williams as to who would be allowed over Camp Williams
6 property into your property?

7 A. No.

8 Q. No agreements in that regard?

9 A. No, sir.

10 Q. Did you have any agreement with the guard service
11 at Camp Williams that no one was to enter the winter pasture
12 area without your written permission?

13 A. We discussed that. I guess, actually with Camp
14 Williams, we had no written agreement. But a number of times,
15 we mentioned to Camp Williams that people were not to go onto
16 our property without permission, written permission. And we
17 told the guards at the gate. Of course, the guard gate is a
18 contractual service, and they change guards like people change
19 their hat up there. So they don't know what's going on.

20 Q. And do you recall what the responses were, if any,
21 to your request or your discussions that people not be allowed
22 to enter onto your property without written permission?

23 A. They just agreed that that's the way it should be.

24 Q. So was it your understanding that during the period
25 in, let's say, 1989 that Camp Williams understood that no one

1 was to go onto your property without written permission?

2 A. To my understanding, yes, there was nothing
3 written. But, yes, I believe they understood that.

4 Q. And the basis for that understanding was
5 conversations you had had with Camp Williams and with the
6 guard service?

7 A. Mostly Camp Williams personnel. We would talk to
8 the guard service once in a while.

9 Q. And could you tell me approximately how many
10 conversations you recall having or that you are aware of that
11 were had with Camp Williams and the guard service regarding
12 access or entry to your pasture?

13 A. I don't have any idea how many times, maybe three
14 or four.

15 Q. Do you recall what period of time those
16 conversations occurred?

17 A. Period of time with respect to years or what years?

18 Q. If you recall a particular year when you had such a
19 conversation, that would be helpful.

20 A. I don't recall any specific time other than the
21 fact that if we had found trespassers down on our property,
22 they would say just about all the time, Camp Williams gave us
23 permission to come in, which they could have or could have not
24 done that. And so occasionally I'd go up or call up at Camp
25 Williams and just reemphasize the fact that we didn't want

1 trespassers on our property. And that would happen
2 periodically and may happen once a summer or may happen twice
3 a summer or may not even happen, you know, in one year.
4 Depends on the situation on what happened.

5 Q. And were those conversations on every occasion
6 prompted by an incident of trespassing?

7 A. Yes.

8 Q. Can you tell me since 1984, what years you know you
9 spoke with Camp Williams about what we've been discussing or
10 what years you know you did not?

11 A. I don't know what years. It's just something that
12 happened.

13 Q. So that I'm clear, you know that at least during
14 the period '84 through, I take it, the present, you've had at
15 least three or four conversations?

16 A. Oh, yes.

17 Q. Possibly more than three or four?

18 A. Possibly.

19 Q. Possibly more than ten?

20 A. I won't say that.

21 Q. Do you recall when it was you first had an
22 understanding with Camp Williams or that you first talked with
23 Camp Williams about people entering onto the property, your
24 property?

25 A. No. Again, it had to have been some trespassing

1 incident, why I made contact at all. But I don't recall what
2 year.

3 Q. Do you recall anyone in particular that you spoke
4 with at Camp Williams about this matter?

5 A. I have talked to Major Huff, Colonel Huff now, and
6 I'm trying to think of the post commander prior to Colonel
7 Huff. Can't recall his name. The commander before Colonel
8 Huff, I talked to him also.

9 Q. Do you recall the name of anyone at the guard
10 service with whom you had a conversation regarding access to
11 the winter pasture?

12 A. No.

13 Q. Do you recall the name of the guard service?

14 A. No. I try to block that out of my mind.

15 Q. Why do you try to block that out of your mind?

16 A. Don't like them, I guess. No, I don't know. You
17 know, I just -- they change quite frequently. And so it seems
18 like the personnel, you know, in the service changes quite
19 frequently, and so I don't try to remember their names.

20 Q. On each occasion that you spoke with someone from
21 the Camp Williams or someone from the guard service, did they
22 agree to cooperate with you and agree to your request that
23 people not be allowed to enter your property without written
24 permission?

25 A. Yes.

1 Q. Do you know whether you ever gave anyone written
2 permission to enter onto your property?

3 A. I have in the past, yes.

4 Q. Did you ever receive any explanation from Camp
5 Williams as to why any particular trespasser had been allowed
6 onto your property?

7 MR. MORGAN: Assuming that they, Camp Williams,
8 did allow it because I think he testified that the trespassers
9 would say, Camp Williams let me down here. But whether that
10 was allowed by Camp Williams or not, he didn't know.

11 A. I don't believe that Camp Williams has ever given
12 people specific permission to go on my property. I don't
13 think they ever have. I think what happens is people come
14 through the guard gate and they want to go fishing. And they
15 says, yes, you can go fishing. And they may tell them that
16 they have to stay on Camp Williams property. I don't know
17 that. And they come down the road. And because of the area
18 that I own, the type of terrain that is there, they
19 automatically want to go down that way. And then if I pursue
20 them when they're on the property, they say, Well, Camp
21 Williams gave me permission when actually Camp Williams did
22 not give them permission. But that's a natural response.

23 Q. (By Mr. James) Did you ever give anyone oral
24 permission to enter onto your property, the winter pasture?

25 A. Yes.

1 A. Let's say on an average of the 15 -- and we're
2 talking about some yearlings or maybe even some weanlings that
3 aren't worth what a mature horse is or a mare is not worth
4 what a gelding is. Maybe an average value of all, if we sold
5 them all, maybe they might average out at \$1800 a head.

6 Q. Now all of the horses on November 20, 1989, that
7 were located in the pasture belonged to you?

8 A. No.

9 Q. How many of those horses were your horses?

10 A. All but one.

11 Q. And the other one was the one we're talking about
12 that belongs to your son?

13 A. No, my father had one in there.

14 Q. Your father had one?

15 A. Uh-huh.

16 Q. Do you recall how long the horses had been in the
17 pasture as of November 20, 1989?

18 A. Two to three weeks, probably around three weeks.

19 Q. And do you know what date you put the horses in the
20 pasture?

21 A. It was the end of October, towards the end of
22 October.

23 Q. Did you put all of the horses in the pasture at the
24 same time?

25 A. Yes.

1 Q. Tell me what type of feed is located in the winter
2 pasture.

3 A. Pasture grass mostly.

4 Q. And --

5 A. There's 12 acres of irrigated ground that could
6 have various. That year, it had barley. So there would be
7 volunteer barley in there. But other than that, it's all just
8 grass.

9 Q. Part of that pasture is irrigated?

10 A. One part of it is.

11 Q. And do you recall how many acres that part consists
12 of that are irrigated?

13 A. 12.

14 Q. And how many acres are located in the pasture
15 itself?

16 A. Well, the pasture, 80 acres.

17 MR. YOUNG: Let me suggest something that might
18 help clarify for the record the kind of the pastures that
19 we're talking about at your house.

20 THE WITNESS: We're talking about winter
21 pastures.

22 MR. YOUNG: Oh, I understand that. Would it be
23 beneficial to have you kind of diagram kind of the area
24 showing Camp Williams and the winter pasture and the summer
25 pasture and your house and State Road 68?

1 Q. And do you raise hay or grain solely for the
2 purposes of feeding your own animals?

3 A. No, I sell. I could have had -- in '89, I probably
4 had a couple sheep too, a couple of ewes.

5 Q. When did you first learn that your horses had
6 escaped on November 20, 1989, from their winter pasture?

7 A. About 8:00, 9:00 o'clock that evening.

8 Q. 9:00 o'clock the evening of the 20th of November?

9 A. (Witness nods head.)

10 Q. Do you recall how it was you found out your horses
11 had escaped?

12 A. I came home from town, and there was a lot of
13 commotion in front of my house, and my horse was dead.

14 Q. What kind of commotion was there in front of your
15 house?

16 A. Police cars, ambulance.

17 Q. The ambulance was there when you came home that
18 evening?

19 A. Yes.

20 Q. And you think that was about 9:00 o'clock?

21 A. It was approximately, as I recall, at about 9:00,
22 yes.

23 Q. And what did you do after you drove up and saw the
24 commotion in front of your house?

25 A. I got out of the car at that time. My wife and I

1 present at that time?

2 A. He may have been there, but I didn't see him. If I
3 did look at him, you know, it didn't register. I don't
4 remember. I couldn't tell you anything about him, how tall he
5 is, what color he is. I don't remember him.

6 Q. Had any of the horses that were located in the
7 pasture on November 20, 1989, ever escaped from that pasture
8 before, from the winter pasture?

9 A. Yes.

10 Q. And do you recall on how many occasions one or more
11 of those horses escaped from the winter pasture?

12 A. 1988, they got out in the fall. Of course, I don't
13 put them over there in the fall. They had dredged the Jordan
14 River. And I'm not sure if it was '88, '87 they dredged it.
15 At the same time, they put in some new gates down in the pump
16 house down at the lake so they could shut the water off going
17 into the river, which they had never been able to do prior to
18 that time. My fence came down on this north pasture, came
19 down to the river right here, (indicating).

20 Q. Now you're referring to Deposition Exhibit Number
21 1?

22 A. Winter pasture.

23 Q. On the north side of the winter pasture.

24 A. Yes.

25 Q. The north fence ran right down to the edge of the

1 river?

2 A. Yes.

3 Q. Okay.

4 A. Prior to that time, they hadn't had any problems
5 because the river always had water in it even in the
6 wintertime. But after they had put the new gates in, they
7 could shut the water off. So the water dropped. The water
8 level dropped quite low. Plus they had dredged it, and that
9 left quite a sand, well, it's like a sand bar along the edge
10 of the river, an embankment. So there was no water. The
11 horses came down around the fence and came up and came over
12 into this area here, (indicating).

13 Q. And did the horses --

14 MR. MORGAN: This area here?

15 A. This area meaning next to the winter pasture.

16 Q. (By Mr. James) The horses came up into the area of
17 the circle containing the Z on Deposition Exhibit Number 1?

18 A. Yes.

19 Q. And that occurred in the fall of 1988?

20 A. That was in '88, yes.

21 Q. And were those horses some of the same horses that
22 escaped on November 20, 1989?

23 A. Yes.

24 Q. Do you recall whether the horse that was killed in
25 the accident was one of those horses that escaped from the

1 pasture in 1988?

2 A. I don't think so. I think he was at the trainer at
3 that time.

4 Q. Do you recall whether some of the horses that came
5 up in the vicinity of your house on November 20, 1989, were
6 the same horses that escaped from the pasture in 1988?

7 A. Yes, they were.

8 Q. Do you know how many of those horses that escaped
9 in 1989, November 20th, 1989, escaped in November or the fall
10 of 1988?

11 A. No, I --

12 Q. But several of the horses were the same horses?

13 A. Yeah, yeah, maybe half of them.

14 Q. Other than this occasion in 1988 and the occasion
15 in 1989 on November 20, are you aware of any other occasion
16 when horses escaped from the winter pasture?

17 A. Up to November 20 of '89?

18 Q. Yeah, up to November 20 of 1989.

19 A. Yes. After I put the horses in in October of '89,
20 towards the end or during the deer hunting period, the fence
21 had been taken down and the horses had gotten out during that
22 period. That was prior to the evening of the accident.

23 Q. Do you recall how many days or weeks prior to the
24 evening of the accident that occurred?

25 A. Approximately maybe two weeks, a week to two weeks.

1 Q. Do you recall from what area of the pasture those
2 horses escaped on that occasion?

3 A. Where the X is on that winter pasture, the north
4 fence.

5 Q. The same area that they escaped from on November
6 20, '89?

7 A. Yes.

8 Q. And how many of the horses escaped from the pasture
9 approximately two weeks before November 20, 1989?

10 A. As I recall, there may have been three or four or
11 five maybe at the most, maybe four, probably four, three to
12 five.

13 Q. Do you recall whether the horse that was killed in
14 the accident was one of those three to five horses?

15 A. I don't remember. As I remember, they were
16 yearlings. At least one or two of them were yearlings that
17 were out. The older horses were not out.

18 Q. Do you know whether any of the horses that escaped
19 approximately two weeks prior to November 20, 1989, were the
20 same horses that escaped and came to your house on November
21 20, 1989?

22 A. I would think so. There's a good chance of it, but
23 I couldn't say definitely. But I would think that there would
24 be a chance, yes.

25 Q. Where did the horses go when they escaped two weeks

1 before November 20, 1989?

2 A. The area where the Z is marked on that map.

3 Q. And do you recall how it was that you came to know
4 that the horses escaped? Again, we're talking the time two
5 weeks before November 20th, '89.

6 A. I was plowing then, at that time plowing some
7 fields down there. And when I came down to plow, I saw they
8 were out. They were eating over in that alfalfa field. So I
9 went over to see why, I mean, to see why they were out. And I
10 noticed that someone pulled the fence down.

11 Q. And how did you come to understand that someone had
12 pulled the fence down?

13 A. Because all the posts were bent over and the wire
14 was stretched out just to the north of the pasture just as far
15 as it could go.

16 Q. The wires had been taken off the posts?

17 A. Yes.

18 Q. And pulled to the north?

19 A. They had hooked them -- I believe they had used a
20 four-wheeler because there were two -- the four-wheeler tracks
21 were in line with the wire, in line with the fence -- or
22 perpendicular to the fence. And I think they took the wires
23 off from the posts, hooked them on their trailer hit it, took
24 off with the four-wheelers and it bent all the metal posts,
25 bent them right over to the ground.

1 Q. Now when you say --

2 A. Either that or they came along and bent them to the
3 ground. I don't know. But the posts were bent over to the --

4 Q. To the outside of the pasture?

5 A. Yeah. And the wire was stretched just as tight as
6 could be to the north, yeah.

7 MR. YOUNG: This is the October or the two
8 weeks prior to --

9 THE WITNESS: Yeah, prior.

10 Q. (By Mr. James) And did you observe whether the wire
11 had been unhooked from the corner post?

12 A. It had to have been unhooked because it was --

13 Q. It wasn't broken?

14 A. No.

15 Q. And do you know whether the barbed wire on that
16 fence was located prior to that occasion on the inside or the
17 outside of those posts? And when I say the inside, I say the
18 inside pasture --

19 A. It was on the inside. Inside of the pasture.

20 Q. It was on the inside, which would be on the south
21 side of the posts?

22 A. Yes.

23 Q. And someone had unhooked those wires and pulled
24 them to the north?

25 A. Yes.

1 Q. And do you recall how those wires had been
2 connected to the steel posts?

3 A. They were on the corner --

4 Q. On each of the steel posts but particularly those
5 that had been bent over.

6 A. They were wired onto them with a piece of baling
7 wire. If you're familiar with the steel posts that have the
8 camelback notches, well, it was wired in there with a piece of
9 baling wire.

10 Q. Do you recall how many steel posts were bent over?

11 A. Approximately four.

12 Q. And did you observe how those wires had become
13 disconnected from the steel posts?

14 A. No.

15 Q. Were any of the steel posts pulled out of the
16 ground?

17 A. No.

18 Q. And I take it you then put the horses back in the
19 pasture; correct?

20 A. Yes.

21 Q. Then did you do anything with spec to the fence?

22 A. Oh, yes, I fixed it.

23 Q. How did you go about fixing the fence?

24 A. Bent the posts back up straight, stretched the wire
25 back to the corner post, tied it on, then secured the barbed

1 wire back to the cement post or, excuse me, the metal post.

2 Q. How did you secure the barbed wire back to the
3 metal posts?

4 A. Wired it back on.

5 Q. With baling wire?

6 A. As I remember, baling wire. It might have been
7 fencing wire.

8 Q. And what did you use to stretch the barbed wire
9 back to the corner?

10 A. I have a fence stretcher.

11 Q. And you used a fence stretcher to do that?

12 A. As I remember.

13 Q. Do you recall having that fence stretcher in your
14 possession at the time you discovered the horses were gone or
15 had got out?

16 A. If I used it, I did. I usually -- it's in my
17 pickup right now over in the parking lot. I usually have it
18 in there, and it's easier to find if I ever need it.

19 Q. Is it possible that you simply stretched the wire
20 back with your hands?

21 A. Yes, that's possible.

22 (WHEREUPON, a luncheon recess was taken.)

23 Q. I think where we left off --

24 MR. MORGAN: Oh, I think he wanted to add
25 something to the record.

1 THE WITNESS: Oh, yes.

2 Q. (By Mr. James) Mr. Hardman, was there something you
3 needed to add to the record?

4 A. Yes. In lieu of the question, Had my horses ever
5 been out prior to 1989 or something --

6 Q. Correct.

7 A. -- to that point, back in 19 -- and I'm not certain
8 what year it was, '83, '84, somewhere in that area in the fall
9 of the year, the cattle was coming back from West Canyon. The
10 farmers graze their cows in the summer out there, and then the
11 mother cows and calves come back on their own a lot. And they
12 were coming back, and they knocked in my summer pasture.
13 Apparently a calf had gone in the pasture, and the mother cow
14 went in and tore the fence down, and the horses got out that
15 fall. And that was in -- I don't know if it was '83, '84,
16 somewhere.

17 Q. And the horses got out of the summer pasture?

18 A. Yes.

19 Q. And do you know whether any of those horses that
20 got out in '83 or '84 were the same horses that escaped on
21 November 20th of '89?

22 A. Some of those were, yes.

23 Q. Do you know how many?

24 A. Possibly six, seven. You know, I could be wrong on
25 the numbers but some of those definitely were the same horses.

1 Q. Do you know where those horses went when they
2 escaped?

3 A. They stayed right there.

4 Q. Just one the outs --

5 A. Stayed on the outskirts of the pasture.

6 Q. Now I believe we were discussing before we broke
7 for lunch the occasion two weeks before November 20th or
8 approximately two weeks before November 20, 1989, when the
9 wires were down and some of the horses got out. And you had
10 indicated that you, I believe, fixed the fence. Do you
11 remember what side of the posts you placed the wire on when
12 you fixed the fence on that occasion?

13 A. Well, I'm certain I put it on the inside, where the
14 horses were. I usually place the wire to the inside so if
15 they do push on it, they're not as likely to push the wire off
16 from the fence.

17 Q. Other than the occasions we've discussed, the two
18 weeks before November 20, 1989, November 20, 1989, then the
19 fall of '88, and the fall of '83 or '84, the occasion when the
20 horses got out then, are you aware of any other occasion when
21 horses owned by you escaped from the summer pasture or the
22 winter pasture?

23 A. I can't tell you a year or a day. I mean, I can't
24 even recall them being out. But there may be times when they
25 got out in that period of time. That's a long time ago. They

1 could have, but there's no way I can say such and such year,
2 such and such day.

3 Q. And you --

4 A. The frequency is, you know, they don't -- it's not
5 an occurrence to where, you know, you'd say, yes, I can
6 remember when they was out.

7 Q. So you don't have any particular recollection of
8 any other instance?

9 A. No.

10 Q. Although it's possible there were other instances?

11 A. Yes.

12 Q. Now I believe you indicated that on the evening of
13 the accident of November 20, 1989, that after you had returned
14 the horses to their enclosure and then went back to the house,
15 you then went back to the accident site?

16 A. Yes.

17 Q. And by that time, the ambulance had left; correct?

18 A. As I recall, yes.

19 Q. Let me back up a little and ask you, Did you
20 observe anything being done at all with Julia Askew the first
21 time you observed the accident scene?

22 A. No, I didn't.

23 Q. So you never saw Julia Askew at all that evening?

24 A. As I remember, I could -- you know, they had the
25 doors closed on the ambulance or one of them, and I didn't

1 walk over to it. No, I never saw her.

2 Q. Do you recall whether there was more than one
3 ambulance on the scene?

4 A. There may have been two. I'm not 100 percent sure
5 on that.

6 Q. What did you do next after you went down to the
7 accident scene the second time? Did you speak with anybody on
8 that occasion?

9 A. I spoke with one of the officers, and I really
10 don't remember what we even talked about. But I did speak to
11 one of the officers.

12 Q. And do you recall with which department or public
13 entity the officer was associated?

14 A. No. It could have been this county sheriff. I
15 don't. I don't remember which one it was.

16 Q. Do you remember anything you said to that officer?

17 A. I don't recall whether it was the first time or the
18 second time that I saw him, I made a statement, something
19 about the poachers, cussing. I cussed the poachers. And this
20 is before I'd ever been down there. But I just made a
21 statement like the damn poachers or hunters have probably left
22 the gates down or the fences down or something.

23 Q. You recall having made some sort of statement?

24 A. I made some statement like that, yeah.

25 Q. To this officer?

1 A. To one of them. And, again, I think it was the
2 investigating officer, but I'm not certain.

3 Q. And you recall having made that statement before
4 you went to the pasture following the accident?

5 A. Yes.

6 Q. Do you recall speaking with this officer the day
7 following the accident?

8 A. No.

9 Q. What I'm trying to get at is you've indicated that
10 you recall having this conversation with the officer whom you
11 believe was the investigating officer and you recall having
12 made the statement you've talked about --

13 A. Uh-huh.

14 Q. -- prior to going to the pasture. And I'm
15 wondering. Was there some other occasion that you spoke with
16 this officer you've described between the time of the accident
17 and the time you went to the pasture?

18 A. Not between those two times, no. The only time I
19 talked to those officers was when I first got out of the car
20 when we came from Lehi and when I walked back down from the
21 house. That's all I can remember.

22 Now I called an officer the next day to have him
23 come out. But, I mean, it wasn't one of the officer that was
24 down there. Well, that I remember, he wasn't one that was
25 down there. He may have been.

1 Q. You didn't know, did you, Mr. Hardman, how the
2 horses had escaped when you had the conversation with the
3 officer about poachers or trespassers?

4 A. No.

5 Q. Why did you assume in making that statement that
6 the horses had escaped because of trespassers or poachers?

7 A. Because the only time that the horses were out is
8 because of trespassers or poachers and because, well --

9 Q. What is your basis for the statement that the only
10 time the horses were out was because of poachers or
11 trespassers?

12 A. Because when the horses were out, you'd go to put
13 the horses in and find out where they got out, the fence has
14 always been laid down, pulled over, or some similar instance.

15 Q. Now I guess I'm a little bit confused because we've
16 talked about three occasions prior to November 20, 1989, when
17 the horses got out or some of the horses got out. And of
18 those occasions, only one that you've described for me
19 involved what you felt were an incident of trespassing. The
20 other occasion involved the river level being lowered, and I
21 believe the occasion in '83, '84 involved a cow or a calf
22 knocking the fence down. And I guess I'm curious to
23 understand the basis for your understanding that it was
24 trespassers or poachers in your belief that had allowed the
25 horses to get out.

1 A. We seem to have two seasons out there of people
2 that come in. In the spring, fishermen, they come. They let
3 the fences down. They'll push the gates over. They'll tear
4 the fences totally out, do whatever they can do to drive down
5 to the river to go fishing. Now there are no horses in there
6 in the spring, but the fact of the matter is it is trespassers
7 and mostly fisherman that are tearing the fences. We have a
8 lot of problems with them tearing the fences down. But the
9 horses aren't in then. So when something happens, you know,
10 in my mind, I automatically go to trespassers, fisherman, or
11 hunters. In the fall, we have problems with mourning dove
12 season and pheasant season. We haven't had too much problem
13 with pheasant season.

14 Q. No pheasants?

15 A. No pheasants to hunt. Used to, but not in the last
16 five years, we haven't. And then deer season, we have had
17 problems in deer season with hunters coming over there. Now
18 I've put the fences up many, many times when the horses
19 haven't been in there, but they have torn the fences down.
20 And every instance that they've been torn down, there's been
21 trespassers and hunters.

22 So I come home, the horses, you know, that has
23 happened. My normal reaction is that the damn hunter let the
24 fence down. That was a normal reaction because of the past
25 experience I'd had with trespassers.

1 Q. Tell me approximately how many instances of
2 trespassing or other problems you experienced in the spring
3 with respect to the winter pasture in the five years prior to
4 November of 1989.

5 A. Geez, I don't know. Instances where the fences
6 have been pushed over or gates let down, possibly maybe five,
7 six times a summer during the summer.

8 Q. How about in the fall, the same time period?

9 A. Maybe one or two times.

10 Q. Each fall or one or two times in the total
11 five-year period preceding November 1989?

12 A. It varies. I can't remember exactly on that.
13 That's hard for me to remember. It all just rolls, you know,
14 ties together, you know.

15 Q. Would it be fair to say that in the fall, instances
16 of trespassing is not unusual in the vicinity of the pasture?

17 A. Yes, that's not unusual.

18 Q. Do you recall --

19 A. Oh, may I say something?

20 Q. You needed to say something?

21 A. May I say something?

22 Q. Yeah.

23 A. Now the night of the 20th when the accident
24 occurred, of '89, one reason that I made that statement, too,
25 is that I had been down there earlier that day and checked the

1 fences. And the reason that I had is because Wednesday, that
2 happened on a Tuesday, and Wednesday, the following day, my
3 wife and I and two of my children, we were going hunting down
4 to Delores Triangle where my wife and my daughter had drawn a
5 special permit. And that's why I can remember going down to
6 checking those fences is because after work that day, I came
7 out that way and checked the fences because whenever I go
8 anywhere, I always check to see that my animals are secure
9 before I feel like I dare leave.

10 And so I had driven down and checked those fences
11 that afternoon. I left work. That particular quarter, I
12 wasn't teaching school. I was working at Geneva for the
13 school, and we got off at 4:00 o'clock. And I came directly
14 from Geneva to the -- I just drove down the road by the
15 fences, looked at them, went up home, and then we started to
16 get ready to go hunting. So I guess I'm sure that had
17 something to do with the fact of why I said what I did.

18 MR. YOUNG: May the record reflect that this
19 last statement you made, Mr. Hardman, was after you had just
20 had a short brief discussion with your counsel here today.

21 Q. (By Mr. James) Now you state that on the afternoon
22 of the accident, you had checked the fences; correct?

23 A. The afternoon of the accident?

24 Q. Yes.

25 A. Yes.

1 A. Again, you know, I can't remember what I was
2 thinking about that night. I'm sure that thought may have
3 gone through my mind. I don't know. I mean, that's kind of
4 normal. When an accident like that happens, you're always
5 concerned about those things.

6 Q. What else was going through your mind? You stated
7 that there were things going through your mind, and you've
8 mentioned that there was concern about the person injured in
9 the accident, concern that your horse had been killed, and
10 that you may have been concerned of the potential lawsuit?

11 A. Concerned about my kids, about the experiences that
12 they had just gone through, concerned about my wife, the
13 emotional state that she was going through.

14 Q. Was your wife upset?

15 A. Very.

16 Q. Do you know why she was upset?

17 A. Because one of the horses had been killed and
18 because someone had been injured, because somebody had kicked
19 the door down, because my kids were upset.

20 Q. What did you do when you got up the next morning?

21 A. Went down to the winter pasture to see if I could
22 see where the horses escaped.

23 Q. Did you speak with anyone before going down to the
24 winter pasture?

25 A. No.

1 Q. Do you recall what time it was when you went down
2 to the winter pasture?

3 A. It was early. I suspect maybe 7:00. I'm sure it
4 was probably 7:00, 7:30.

5 Q. How long does it take you to drive on an ordinary
6 day from Geneva to your home?

7 A. Oh, 20 minutes, 25 minutes.

8 Q. On the afternoon of the 20th of November of 1989,
9 did you stop by your house before driving to the pasture?

10 A. No, not that I recall, I didn't. I don't think so.

11 Q. So your recollection is you drove straight from
12 Geneva to the pasture?

13 A. Uh-huh.

14 MR. MORGAN: Is that a yes?

15 THE WITNESS: Yes.

16 Q. (By Mr. James) Is that something that you had ever
17 done before?

18 A. I have done it before, yes. I used two methods of
19 checking my horses all the time. One, because of the vantage
20 point of my house sitting up on the hill, I could see 90
21 percent of that pasture from my house. The summer pasture, I
22 see all, winter pasture, at least somewhere near 90 percent of
23 it. And I have a pair of binoculars sitting in my bedroom
24 window. When I get up in the mornings, one of the first
25 things I do is walk over to the window and look in my

1 binoculars and see what's going on out there. I look out
2 there at night. I look out there many times a day if I'm any
3 time in the bedroom pretty much.

4 So I can see the horses in either pasture most any
5 time of the daylight hours. If they go in the winter pasture,
6 if they drop down over the hill, I can't see them. But as
7 long as they're up above, I can observe whether they're in the
8 pasture or not.

9 And the other way that I would check those fences
10 is I'd physically drive over there two, three times a week to
11 check. Well, plus I'm farming over there, so I'm over there
12 anyway. I'm plowing that time of year, and so I'm in that
13 vicinity anyway. And so, I mean, it's just natural that
14 you're always looking at your fences, at your animals to see
15 if they're secure. And I'm not saying that you might
16 purposely do that. I mean, you know, that's not on your
17 agenda every day, but it's just something you do by habit.

18 Q. Is there a reason that you check the pasture so
19 often?

20 A. Sure, so that my horses don't get out.

21 Q. Was that a constant concern in your mind that your
22 horses would get out?

23 A. More of a concern when they're in the winter
24 pasture because of the problems we've had with hunters, yes.

25 Q. And so in part, the reason you checked it so often

1 Q. (By Mr. James) Did you observe from your vehicle
2 that the fence was down, or did you observe that after you got
3 out of your vehicle?

4 A. I could see it was down before I got out as I
5 stopped right here, (indicating).

6 MR. MORGAN: Right here being?

7 THE WITNESS: Right here on the bend of this
8 road by the Z.

9 Q. (By Mr. James) What were the horses doing at the Z?
10 Were they grazing?

11 A. They were feeding in that field. There's a hay
12 field there they were feeding in.

13 Q. Who owned the hay field then in which the Z is
14 located?

15 A. My father did.

16 Q. And did he own that entire field clear up to the
17 road?

18 A. No.

19 Q. Why don't you --

20 A. There's a canal bank. The canal goes right here.

21 Q. Would you write "canal" along there so we know
22 that's the canal.

23 A. (Witness complies.) And he owns -- and there's
24 a ditch that comes down here, (indicating). amp Wi liams
25 owns all of this area here around this field.

1 Q. I'm going to take a blue pen. Now tell me.
2 Starting here, Camp Williams owns this?
3 A. Yes.
4 Q. To here?
5 A. Yes, and west.
6 Q. Then up the ditch?
7 A. Yes.
8 Q. Is the ditch on Camp Williams property?
9 A. On the property line.
10 Q. Up here?
11 A. Uh-huh.
12 Q. Then over to the road?
13 A. Yes.
14 Q. And so --
15 A. They own this, (indicating).
16 Q. Over the road up, this is -- and I take it this
17 way?
18 A. Yes.
19 Q. This is all Camp Williams. I'll write "Camp
20 Williams property" in that area. And tell me now where the
21 property is that your father owns outside of the winter
22 pasture.
23 A. This piece right here, (indicating).
24 Q. Then that would be --
25 A. Where the Z is at.

1 Q. And the horses then were grazing in that area?

2 A. Horses were grazing here, (indicating). So I put
3 the horses in, put the fence up, observing first of all that
4 the fence was on -- the wire of the fence was on the inside of
5 the pasture, that it had been taken off from the post, it
6 wasn't cut, it wasn't broken. It had been taken off from the
7 corner post and was on the inside the pasture.

8 MR. MORGAN: The pasture being the winter?

9 A. The winter pasture. So it was on the south side of
10 the fence. I put that up, put these horses in. And when I
11 went back home, I went up this way, (indicating). And as I
12 was coming along the canal, I noticed some magpies right here,
13 (indicating).

14 Q. (By Mr. James) The magpies, when you said "right
15 here," were located --

16 A. Just above this field here.

17 Q. Approximately what, directly west of the Z you've
18 circled along the canal?

19 A. Yeah, maybe a little bit this way, (indicating), to
20 the north of the Z.

21 Q. I'll draw a little red circle. Approximately
22 there?

23 A. Uh-huh.

24 Q. The red circle is drawn along the canal.

25 A. There was a number of them. Which usually if you

1 see a bunch of magpies, you automatically think something's
2 dead. I mean, they're vultures.

3 Q. Like when you see a bunch of lawyers, you think
4 there's been an accident?

5 A. You hope there's a bunch of magpies right there,
6 yes. So the magpies, as I got over there, there had been a
7 deer killed there. There was entrails, deer entrails, and
8 they were almost gone. They had eaten a good share of them.
9 There was some eating a good share of the deer. So I came on
10 back and went up to my house after that.

11 Q. Did you observe any magpies in this area on the
12 prior afternoon --

13 A. No.

14 Q. -- when you had driven by the pasture?

15 A. There's always magpies down there, but they don't
16 congregate.

17 Q. And you say most of the entrails were gone?

18 A. About half of them, maybe not that many. Quite a
19 few of the entrails were gone.

20 Q. Did you observe any blood in the area?

21 A. Dried, some dried blood. Well, just right there
22 where the entrails were at.

23 Q. Did you observe any bullet casings anywhere?

24 A. No. Do you hunt deer?

25 Q. Yes.

1 A. Do you know how long it takes a magpie to eat
2 entrails? Not very long.

3 Q. Do you recall how many magpies were in the
4 vicinity?

5 A. Let's see. I think there was probably about seven
6 or eight. Yeah, honestly, I think there were probably seven
7 or eight, maybe a couple more.

8 Q. Now you say you stopped and put the fence back up
9 before putting the horses back in the pasture?

10 A. Yes.

11 Q. And do you recall -- or I believe you testified
12 that the wire had been taken off the corner?

13 A. Yes.

14 Q. And that was the same as a couple of weeks earlier.
15 The wire had been taken off the corner post?

16 A. Yes.

17 Q. How many wires had been taken off the corner post?

18 A. Two.

19 Q. Is that the number of wires that ran along the
20 north fence?

21 A. Yes.

22 Q. When you put the fence up on the morning of the
23 21st of November, tell me how you did that.

24 A. I just pulled it to the corner post and wired it
25 on.

1 Q. With your hands?

2 A. Yes.

3 Q. Did you wire --

4 A. As I remember, I did.

5 Q. Do you recall whether you wired -- well, first, let

6 me ask this. How much of the fence had been taken down?

7 A. Probably three poles, two or -- from the corner,

8 probably three steel poles. It was all drooping. But I mean,

9 you know, laying on the ground, as I recall, there were maybe

10 three poles.

11 Q. Three posts along there?

12 A. Yeah, three posts.

13 Q. So the wire had been pulled off three posts?

14 A. Yeah.

15 Q. Would that be including the corner post or the

16 corner post and --

17 A. No. That doesn't include the corner post.

18 Q. -- three more? Were the posts bent?

19 A. No.

20 Q. Did you observe whether the wire that had wired the

21 barbed wire to the post had been cut?

22 A. No, I didn't.

23 Q. Did you observe whether it had been undone?

24 A. No. Didn't find that wire.

25 Q. Did you look for it?

1 A. No. Well, when I pulled that back, I looked for
2 wire to wire it back to the post, but I didn't --

3 Q. You didn't see the wire lying there on the ground
4 or anything?

5 A. Did not see the wire lying on the ground, no.

6 Q. And did you wire the fence back up?

7 A. Yes.

8 Q. Did you at a later date return to that fence and
9 perform any additional repairs?

10 A. I came down later and stretched the fence tighter.

11 Q. Do you recall when you came down later?

12 A. No, it was later. It might have been a week.

13 Q. Stretched the two wires tighter?

14 A. Yes.

15 Q. Is that because you couldn't get them tight enough
16 when you stretched them with your hands?

17 A. Yeah, I brought the fencing tool down and stretched
18 them tighter.

19 Q. You didn't have the fencing tool with you on that
20 occasion?

21 A. No.

22 Q. Could you tell me how far apart approximately the
23 posts on the north side of the fence are located?

24 A. Maybe 30 feet.

25 Q. Since November 20, 1989, have you added any steel

1 posts along the north side of the fence?

2 A. No.

3 Q. Do you know if anyone has added any steel posts
4 along the north side of the fence since November of 1989?

5 A. Back up. Yes, I have not -- I haven't -- this
6 fence comes along, and then it drops down to the river, right?

7 Q. Right.

8 A. Up here, no. Where it drops down to the river, I
9 added some posts in there, and there's some little --

10 Q. That would be as it goes down over the hill?

11 A. Yeah, right. I did add posts down there, plus I
12 put some -- no, that was before. So I did add some between
13 there and the river. It seems like maybe two, two or three.

14 Q. And when did you do that?

15 A. I don't recall. But it was since '89, I did that.

16 Q. Where you added those posts were in the area
17 further east from where the horses got out; is that correct?

18 A. Yes, yes.

19 Q. And do you know whether any posts since 1989,
20 November, have been removed from that fence? I'm talking,
21 again, the north side, the north fence of the winter pasture.

22 A. I don't think so.

23 Q. After pulling the fence back up and putting the
24 horses back in, you returned to your house; correct?

25 A. Yes.

1 Q. Do you recall what you did next?

2 A. Called the county sheriff.

3 Q. Do you recall with whom you spoke at the county
4 sheriff's office?

5 A. No, I don't. And I called Bob Harmon from the Farm
6 Bureau.

7 Q. Who did you call first of the two?

8 A. I don't remember. But I need to make a correction.
9 I'm older, and my mind is going, and I realize this. I did
10 not put the fence up until after I had the sheriff and Bob
11 Harmon come out and look at it. And I apologize for that. I
12 told you I did, but I didn't. I left the fence down.

13 Q. You left it down?

14 A. Yes. As I recall, I think I kicked the horses in
15 the pasture, but I left the fence down.

16 Q. And was there a reason that you thought the horses
17 would stay in the pasture given the fence was down?

18 A. I didn't really think about that. I wasn't
19 concerned about it at that time. My biggest concern was the
20 fact that the fence was down and that the wires were on the
21 inside of the fence.

22 MR. MORGAN: Inside of the fence?

23 THE WITNESS: Inside of the posts.

24 Q. (By Mr. James) On the inside of the pasture?

25 MR. YOUNG: Pasture?

1 A. Pasture. I'm sorry. Yes. In fact, I was very
2 pleased when I saw that.

3 Q. (By Mr. James) Why was that?

4 A. Because I knew that someone had let the fence down
5 because if the horses had got out because they pushed the
6 fence over, the wires would have been on the north side of the
7 fence rather than on the inside, or¹ they would have been on
8 the outside.

9 Q. You've never seen an animal get tangled up in a
10 fence and pull it to the inside --

11 MR. MORGAN: To the inside?

12 Q. (By Mr. James) -- of a pasture or of the enclosure
13 where the animal was kept?

14 A. I've never seen an animal undo a fence, the wires
15 off from the corner post.

16 Q. So whether the wires were to the inside or the
17 outside really didn't matter. It was that they had taken them
18 off the posts; that's really what mattered to you?

19 A. Well, what matters was two points, one, I mean, my
20 immediate thoughts were, yes, because now I know I'm not
21 liable because the wires had been taken off from the corner
22 posts and the wires were on the inside of the pasture on the
23 winter pasture. Had the horses pushed the wires or the fence
24 over, the wires or the fence would have been broken, which
25 they wouldn't have broken that wire to start with because it

1 was new wire, brand new wire, within a year old or two. I
2 mean, it was relatively new wire. And the horses would have
3 pushed the wire out. The wire would have been on the outside,
4 not on the inside. Unless had it broken, then possibly the
5 wire could have flipped back, yeah. But that's not what
6 happened. It was unwound from the corner post.

7 Q. At the time you visited the pasture on the morning
8 of November 21st, did you observe anything else with respect
9 to the fence or with respect to evidence of anyone --

10 A. The only thing I observed, there were some tire
11 tracks. The fence was on the inside, and there would have
12 been a fresh deer killed. Now that, you know --

13 Q. Show me again where it was you observed the tire
14 tracks.

15 A. They were approximately where the X is at.

16 Q. And did those tracks lead into the pasture?

17 A. They went both ways.

18 Q. You could actually see the tracks going into the
19 pasture?

20 A. Yeah.

21 Q. Why don't you draw for me on the map the tracks as
22 you recall.

23 A. (Witness complies.)

24 Q. So they were well into the pasture?

25 A. Uh-huh.

1 A. No.

2 Q. So essentially once the horses got out of the
3 pasture, they had unobstructed access to the road other than
4 ditches or the sprinkler line that we talked about?

5 A. Yes.

6 Q. Had you ever had a sheriff investigate instances of
7 trespassing?

8 A. Yes.

9 Q. That had occurred prior to November 20?

10 A. Yes.

11 Q. And do you recall how many times prior to November
12 20 you had requested that a sheriff or some other law
13 enforcement agency investigate trespassing problems?

14 A. I don't remember how many times. I remember
15 probably my most outstanding time.

16 Q. When did that occur?

17 A. Well, I had a county sheriff from Salt Lake County
18 arrested for trespassing. He tore the fence down, and it was
19 great. I enjoyed it.

20 Q. You don't recall when that occurred?

21 A. No, I don't. I would believe it would have been
22 within three years of '89, somewhere in that area. No horses
23 were in the pasture then. That was in the spring. They were
24 fishing.

25 Q. Do you recall any other instances that you'd

1 reported to the sheriff's office problems of trespassing in
2 the vicinity of the winter pasture?

3 A. There were a number of times, but I don't recall
4 when they were, no.

5 Q. When you placed the call to the sheriff's office on
6 the morning of the 21st of November, did the person at the
7 other end of the line acknowledge any awareness that you had
8 had trespassing problems in that vicinity?

9 A. No.

10 Q. And --

11 A. Are you talking about the dispatcher?

12 Q. With whomever you spoke when you called in.

13 A. Well, when I call, you talk to the dispatcher. No,
14 they say nothing.

15 Q. And do you remember anything else that was said
16 during that conversation?

17 A. No.

18 Q. Was there an indication that someone would come to
19 investigate?

20 A. Yes, any time that you make any kind of a request,
21 they have to come and investigate.

22 Q. And so the dispatcher indicated to you that someone
23 would come and investigate?

24 A. Yes.

25 Q. And did she tell you when that someone would be

1 A. Yes.

2 Q. (By Mr. James) Tell me what was said at that
3 meeting.

4 MR. MORGAN: Object. Attorney work product.

5 MR. JAMES: Are you instructing him --

6 MR. MORGAN: I'm instructing him not to answer.

7 Q. (By Mr. James) Are you going to follow your
8 counsel's instruction?

9 A. Yes.

10 Q. When was it, Mr. Hardman, that you hired Mr. Allred
11 and Mr. Smith to fix the fence?

12 A. It would have been the last part of October, middle
13 of October maybe.

14 Q. 1989?

15 A. Yes.

16 Q. And was there a reason that you hired these two
17 gentlemen to fix the fence rather than fixing it yourself?

18 A. Yes.

19 Q. Why was that?

20 A. I was very busy doing my farm work and didn't have
21 time to do it.

22 Q. And had you ever hired either of these two
23 gentlemen to assist you in fixing fence previously?

24 A. Yes.

25 Q. On how many occasions?

1 Q. Do you have any knowledge regarding how many people
2 were cited or warned for trespassing in the vicinity of the
3 winter pasture in the fall of 1989?

4 A. No.

5 Q. Did you do anything in the area of the winter
6 pasture to discourage or prevent trespassing other than the
7 reports you made or requests you made to Camp Williams and to
8 the Utah County Sheriff's Office?

9 A. Prior to the accident?

10 Q. Yes.

11 MR. MORGAN: You mean like putting up signs or
12 something?

13 MR. JAMES: Signs.

14 A. Painted the fence posts orange.

15 Q. (By Mr. James) Anything else?

16 A. No.

17 Q. Have you had a trespass problem in the vicinity of
18 the summer pasture?

19 A. Occasionally.

20 Q. Have those problems been as frequent in the
21 vicinity of the summer pasture as in the vicinity of the
22 winter pasture?

23 A. No.

24 Q. Would it be fair to characterize the trespass
25 problems in the area of the winter pasture as being much more

Tab F

* * * UTAH COUNTY * * *

OFFENSE REPORT

PRINTED: 01/27/92

CLASSIFICATION: CRIM MISCH
JB CLASS: MISDEMEANOR

REPORT NO: 0020180

ADDRESS OF OCCUR: 9971 N SR68
DISTRICT: N BEAT: 11 GRID: 0500

CITY: 01 RM/APT:

DATE REPORTED: 11/21/89 TIME REPORTED: 0818
DATE OCCURED: TIME OCCURED:

DAMAGED PROP AMT: \$200 STOLEN PROP AMT: PREMISE:

EMPL/BUSN: HARDMAN, PAUL DOB: SEX: M RACE: W
ADDR: 9971 N SR 68 CTY: 01 ST: UT ZIP:

REPORTING : MONSON, JERRY INITIAL INVESTG UNIT: PATROL

COMMENTS: VANDALISM TO FENCE, RP WOULD LIKE EX PATROL FOR TRESPASSING AND SPOT
LIGHTING. 10400 N BETWEEN SR 68 AND 10400 W

INCIDENT NAMES

HARDMAN, PAUL RPTG DOB: REPORT NO: 0020180-0
ADDR: 9971 N SR 68 CTY: 01 SEX: M RACE: W
ID NO: 0000000350 MISC ID: ST: UT ZIP:
BUSN/SCHOOL: RES PHONE: 768-3889
BUSN PHONE:

OFFENSE NARRATIVE

REPORT NO: 0020180

SYNOPSIS:

RP REPORTS HUNTERS KNOCKING DOWN HIS FENCE, CAUSING HIS HORSES TO GET
OUT ON THE HIGHWAY. NO SUSPECTS.

INITIAL CONTACT:

ON 11-21-89 AT 0845 HRS. R/D MET WITH THE RP PAUL HARDMAN AT HIS HOME.
RP ADVISED ONE OF HIS HORSES HAD BEEN HIT ON THE HIGHWAY LAST NIGHT 11-20-89
CAUSING A SERIOUS TRAFFIC ACCIDENT. THE NEXT MORNING 11-21-89 THE RP
CHECKED THE FENCE AROUND HIS PASTURE TO SEE HOW THE HORSE GOT OUT AND
OBSERVED A SECTION OF FENCE THAT HAD BEEN KNOCKED DOWN ON THE NORTH SIDE OF
HIS PASTURE NEAR CAMP WILLIAMS. THE RP SAID HE HAS PUT THAT SECTION OF
FENCE UP THREE TIMES SINCE THE DEER HUNT, BUT THE HUNTERS KEEP KNOCKING IT
DOWN.

OBSERVATION:

R/D RESPONDED TO SCENE WITH THE RP AND OBSERVED WHERE THE FENCE WAS
DOWN. IT APPEARED SOMEONE HAD KNOCKED THE FENCE DOWN WITH A FULL SIZE PICK-
UP TRUCK, AS THERE WAS OLD TIRE TRACKS NEAR THE FENCE. ALSO R/D OBSERVED

HERE A DEER HAD RECENTLY BEEN POACHED, ON THE RP'S PROPERTY.

ACTION TAKEN:

RP WANTED TO SHOW R/D THE FENCE BECAUSE HE IS AFRAID OF BEING SUIED
OR HAVEING HIS HORSE CAUSE AN ACCIDENT. ALSO RP'S HORSE WAS KILLED IN AUTO
ACCIDENT. R/D ADVISED RP THAT HE WOULD PUT HIS PROPERTY ON THE EXTRA PATROL
LIST SO OTHER DEPUTYS WOULD BE AWARE OF THE PROBLEM AND WATCH FOR TRESPASS-
ING AND VANDALISM IN THE AREA. NO FURTHER ACTION TAKEN.

CASE MANAGEMENT

REPORT NO: 0020180
REPORTING : MONSON, JERRY INITIAL REPORTING UNIT: PATROL
FOLLOWUP INVESTIGATOR: FOLLOWUP INVESTG UNIT:
IF FOLLOWUP ASSIGNED: NEXT REVIEW DATE:
CASE STATUS/DISPO: CLR EXCEPTN STATUS/DISPO DATE: 112189
FOLLOWUP REPT RCVD: ASSISTING INVESTIGATOR:
FOLLOWUP REPT RCVD: ASSISTING INVESTIGATOR:
OLVABILITY FACTORS:

OLVABILITY RATING: 0

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IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH

JULIA LEE ASKEW,

Plaintiff,

-vs-

PAUL HARDMAN,

Defendant.

)
)
) No. 910400665
)
) Testimony of:
)
) Paul Hardman
)
)

January 5 & 6, 1993

Utah County Judicial Center

Provo, Utah

BEFORE: THE HONORABLE LYNN W, DAVIS, JUDGE

APPEARANCES:

For the Plaintiff: GARY A. DODGE, ESQ. &
MARK F. JAMES, ESQ.
Attorneys At Law
185 South State #1300
Salt Lake City, Utah 84111

For the Defendant: STEPHEN G. MORGAN, ESQ. &
MITCHEL T. RICE, ESQ.
Attorneys At Law
136 South Main #800
Salt Lake City, Utah 84101

1 farm and raise horses.

2 Q And do you raise horses commercially?

3 A Yes.

4 Q For sale?

5 A Yes.

6 Q And for show?

7 A Yes.

8 Q Mr. Hardman, up on the easel to your
9 left is an aerial photograph that I believe has
10 been introduced, and it's marked Defendant's
11 Exhibit 6. Can you identify that?

12 A Yes, I can.

13 Q Is that an aerial photograph
14 surrounding your home?

15 A Yes, it is.

16 Q Could you point out specifically
17 precisely where your home is located?

18 A It's right here. (Indicating.)

19 Q And while you're there at that location
20 can you point out where, as you observed it, the
21 accident happened on the night of November 20,
22 1989?

23 A Right in this location here.
24 (Indicating.)

25 Q Can you also point out while you're

1 there, Mr. Hardman, the general boundaries of
2 your winter pasture?

3 A Yes.

4 Starting at the northwest corner, there
5 would be a fence that goes just north of this
6 road right here that comes down to the river.
7 The boundary goes along the river to this point
8 right here, this dark line, comes over there;
9 comes further south to this corner west to the
10 southwest corner, and then goes back to the
11 northwest corner. (Indicating.)

12 Q While you're in that vicinity, can you
13 point out for the jury where, on the morning of
14 November 21st, you observed your fence being
15 down on the ground?

16 A Up on the northwest corner in this area
17 right here. (Indicating.)

18 Q So when we talk about the north fence
19 line as the one being down, it's the one
20 starting in the northwest corner and proceeding
21 east from there; is that correct?

22 A Yes.

23 Q And then there's the fence-- a
24 picture-- I'm sorry I don't recall the number.
25 The picture that was just shown to the

1 preceeding witness. Yes. That's-- Defendant's
2 Exhibit 18 is a picture of a gate.

3 Can you point out precisely where that gate
4 is located, or approximately where it is on that
5 aerial?

6 A That gate goes across this road right
7 here. This little access road. (Indicating.)

8 Q And--

9 THE COURT: Counsel, is there some
10 merit in perhaps marking this exhibit with some
11 of these--

12 MR. DODGE: It would actually be a
13 good idea.

14 Q (BY MR. DODGE) Maybe you could take,
15 Mr. Hardman, one of the colored markers there,
16 and mark and draw an outline around your home
17 and around the pasture, the winter pasture that
18 we've been discussing.

19 You've just drawn one in the lower
20 left-hand corner, basically around your home and
21 surrounding property?

22 A Yes.

23 Q And if you could, also draw around the
24 general outline of the winter pasture.

25 Now, if you will point, now that you have

1 drawn the boundaries, one more time where the
2 northwest corner is, and then the north fence
3 line that you observed down on the morning after
4 the accident?

5 A Maybe green?

6 Q Please.

7 A Okay. Now you want, again, the
8 northwest--

9 Q Start at the northwest corner, and then
10 draw along the northern fence line in the
11 approximate location where you observed the
12 fence down the morning after the accident.

13 MR. MORGAN: Just where the fence is
14 down?

15 THE COURT: Correct.

16 MR. DODGE: Correct.

17 Q (BY MR. DODGE) Now, would you also
18 indicate approximately where the gate is that is
19 depicted in Exhibit 18?

20 You've marked along the road just around to
21 the west of the northwest corner; is that right?

22 A Yes.

23 Q So it's along--

24 A It's east. Excuse me. It's south of
25 the north--

1 A Shows a fence post with five barbs of
2 wire on it.

3 Q Does that picture approximate the
4 condition of the fence in April of 1989?

5 A At that location?

6 Q Yes.

7 A Very similar.

8 MR. DODGE: Your Honor, I would move the
9 admission of Plaintiff's Exhibit 19.

10 MR. MORGAN: No objection.

11 THE COURT: It may be received.

12 MR. DODGE: And request permission to
13 exhibit this to the jury.

14 (Whereupon, Plaintiff's Exhibit No. 19 was
15 received into evidence.)

16 Q (BY MR. DODGE) I'm sorry. I said April
17 of 1989. November of 1989 was my question.

18 Is this a reasonable depiction?

19 A Yes.

20 Q Now, Mr. Hardman, you have in front of
21 you a smaller version of this photograph. You
22 indicated there are five strands of barb wire
23 fence at this location?

24 A I believe I could count five on that
25 larger one. Four or five.

1 Q And this-- at various places in your
2 pasture are there from between two and five
3 strands?

4 A Yes.

5 Q Some places as little as two, some
6 places as much as five; is that correct?

7 A Yes.

8 MR. DODGE: Your Honor, I think I may
9 have just handed you the wrong one. I'm sorry.

10 Q (BY MR. DODGE) Mr. Hardman, I will next
11 hand you a photograph that I will ask to have
12 marked as Exhibit-- Plaintiff's Exhibit 20.

13 (Whereupon, Plaintiff's Exhibit No. 20 was
14 marked for identification.)

15 Q (BY MR. DODGE) Ask you whether you can
16 identify that picture?

17 A Yes, I can.

18 Q What does that picture depict?

19 A That shows the north fence line on the
20 winter pasture.

21 Q Now, the north fence line where you
22 observed the fence having been let down?

23 A Yes.

24 Q Does the picture reasonably depict the
25 north fence line as it existed as of about

1 November 1989?

2 A I can't see the top wire in the picture
3 on the north fence line in this picture.

4 MR. DODGE: May I approach the
5 witness, Your Honor?

6 THE COURT: You may.

7 Q (BY MR. DODGE) I'm sorry. We've got
8 them as big as we could. Can you see a top wire
9 that goes along right there?

10 A Yes.

11 Q Does that reasonably depict the
12 condition of the fence as you recall it as of
13 November 1989?

14 A As far as the number of wires and the
15 posts, it does. I can't tell on the wires as to
16 the placement or how tight they are. But other
17 than that, it does.

18 Q Have some posts been added to this
19 fence line since November 1989?

20 A No.

21 MR. DODGE: Your Honor, may I-- excuse
22 me. I move the admission of Exhibit 20.

23 MR. MORGAN: No objection. However, I
24 think Mr. Hardman's statement that in terms of
25 it being a reasonable reflection-- that is, as

1 to the post and the fact that wire was there,
2 but he can't tell. I think he said, with regard
3 to the height of the wire-- or with regards to
4 how tight the wire was. So with that
5 understanding, we wouldn't have an objection.

6 THE COURT: It may be received.

7 (Whereupon, Plaintiff's Exhibit No. 20 was
8 received into evidence.)

9 MR. DODGE: May I exhibit it to the
10 jury, Your Honor?

11 THE COURT: You may.

12 Q (BY MR. DODGE) MR. DODGE: As I'm
13 doing this, Mr. Hardman, I will ask you once
14 again: The fence is going from the foreground
15 of this picture, the posts. To the background
16 is the north fence line that you've described;
17 is that right?

18 A Yes.

19 Q And the corner post has orange painted
20 on it; is that correct?

21 A Yes.

22 Q Was it from that corner that you
23 observed the fence having been let down?

24 A Yes.

25 Q And the fence, as you observed it that

1 morning, was let down from that post?

2 A Yes.

3 Q And then back two or three poles from
4 there; is that right?

5 A Yes.

6 Q Now, there's been some reference to--
7 well, let me say it this way: Can you tell me
8 the distance, roughly, between that northwest
9 corner post-- the one in the foreground of this
10 picture-- and the point at which the fence drops
11 down over the horizon and heads down towards the
12 river?

13 A The distance from the corner to where
14 it drops over to the river?

15 Q Where it drops down so that you can no
16 longer see the fence in this photograph, when it
17 begins to drop down towards the river. Is that
18 about a hundred feet?

19 A Approximately, give or take 20 feet,
20 maybe, yeah.

21 Q Now, in the foreground of this picture
22 heading to the west are three strands of barb
23 wire fence; is that right?

24 A Yes.

25 Q Excuse me. I said to the west

1 pole, this orange-- this pole with orange paint
2 at the top?

3 A It has a double wrap around the post.
4 Then the wire comes back and wraps around
5 itself.

6 (Whereupon, Plaintiff's Exhibit No. 21 was
7 marked for identification.)

8 MR. DODGE: May I approach the witness,
9 Your Honor?

10 THE COURT: You may.

11 MR. DODGE: May I ask for a continuing
12 ability to do that while I'm handing him these
13 pictures?

14 THE COURT: You may, counsel.

15 Q (BY MR. DODGE) Mr. Hardman, let me hand
16 you what's been marked Plaintiff's Exhibit No.
17 21 and ask you if you can identify that?

18 A That's the gate that I've marked on the
19 map there that goes down in by the river.

20 Q Now, that's the gate that we've already
21 seen an earlier picture of; is that right?

22 A Yes.

23 Q Can you describe for the jury the
24 reason those posts are on that gate?

25 A The rods?

1 that gate over a couple of times, the fishermen
2 did in the spring. So they put those rods on
3 the gate to deter the fishermen, or whoever
4 would push it over.

5 Since that time, for about the last-- I'm
6 saying seven-- six, seven years-- maybe a little
7 longer-- there's been metal gates similar to
8 that one put at this intersection, at this
9 intersection, and at this intersection so that
10 now this entire area is gated off. And since
11 then, we've had no problems with that.
12 (Indicating.)

13 Q So the posts were put up by the
14 National Guard to try and prevent people from
15 trespassing, from knocking the gates over?

16 A From pushing the gate over.

17 MR. DODGE: I move the admission of
18 Plaintiff's Exhibit 21.

19 MR. MORGAN: No objection.

20 THE COURT: It will be received.

21 (Whereupon, Plaintiff's Exhibit No. 21 was
22 received into evidence.)

23 MR. DODGE: Request permission to
24 exhibit to the jury.

25 THE COURT: You may.

1 Q (BY MR. DODGE) Although it's more
2 difficult to see on Exhibit 21, Mr. Hardman, it
3 is visible on the earlier photograph that I
4 believe was 18 or 16. I've forgotten.

5 A "No Trespassing" sign, the National Guard
6 put that up as well; is that right?

7 A Yes. I believe they put that up with
8 the gate, yes.

9 They conferred with my father. Actually,
10 they were working with him at that time and
11 asked him-- there were negotiations between he
12 and the National Guard as to the gate, and sign
13 and so on.

14 (Whereupon, Plaintiff's Exhibit No. 22 was
15 marked for identification.)

16 Q (BY MR. DODGE) I'll hand you, Mr.
17 Hardman, what's been marked as Plaintiff's
18 Exhibit 22 and ask you if you can identify that
19 picture?

20 A That's a picture taken to the west--
21 facing the west with a person standing on the
22 outside of the pasture taking a picture of the
23 north fence line looking west.

24 Q And does that reasonably depict the
25 fence as it existed in November 1989?

1 Q Back at the same corner post we were
2 looking at just a moment ago?

3 A Yes, it is.

4 Q And a few poles before it.

5 Now, this, again, is the precise location
6 that you testified the fence had been let down
7 when you observed it the morning after the
8 accident?

9 A Yes, it is.

10 Q And you testified that it was taken
11 back to two to three poles from the corner?

12 A Yes, I did.

13 Q Is it your testimony that the two poles
14 in this picture-- other than the corner pole--
15 are those two poles that were there as of that
16 time?

17 A Yes.

18 (Whereupon, Plaintiff's Exhibit No. 23 was
19 marked for identification.)

20 Q (BY MR. DODGE) Mr. Hardman, I'll hand
21 you what's been marked Plaintiff's Exhibit 23
22 and ask you if you can identify that picture?

23 A That's the north fence line looki:
24 eastward, a person taking the picture's on the
25 outside of the pasture.

1 what the condition was in November of 1989. And
2 in terms of the posts that were there, I think
3 that is all he is saying that it represents.
4 He's not saying that the height of the wire or
5 how tight the wire was stretched is as it was on
6 November 20, 1989.

7 THE COURT: Does it represent the number
8 of wires?

9 MR. DODGE: It represents the numbers.

10 THE COURT: That inquiry ought to be
11 made. Beyond that, it does not--

12 Q (BY MR. DODGE) Well--

13 A You can see two wires.

14 Q Can you see the two wires in this
15 picture?

16 A I can up on the foreground, but not on
17 the background.

18 MR. DODGE: May I approach the witness,
19 Your Honor?

20 THE COURT: You may.

21 Q (BY MR. DODGE) Let me, on the larger
22 photograph, ask you if you can see the wire
23 coming in from the right side of the picture
24 which are attached to the corner post with the
25 orange; they attach to the second pole, and then

1 And the testimony of the witness was
2 initially as counsel stated, but there were
3 additional questions, I think, that clarified
4 that that said it may be close to what it was in
5 that case.

6 MR. MORGAN: I believe he said it
7 looked looser.

8 THE WITNESS: I did.

9 (Whereupon, Plaintiff's Exhibit No. 23 was
10 received into evidence.)

11 MR. DODGE: May I exhibit this to the
12 jury, Your Honor?

13 THE COURT: Counsel, in light of the
14 fact that it's been received, is there any
15 dispute as to the number of wires on that
16 occasion, November 1989?

17 MR. DODGE: There is none, Your Honor.

18 THE COURT: So there were two then;
19 there's two in this photograph?

20 MR. DODGE: Yes.

21 THE COURT: Very well.

22 Q (BY MR. DODGE) Mr. Hardman, might I
23 ask, other than the issue you've raised about
24 the possibility that the wires weren't quite at
25 this height or quite at exactly the same

1 that right?

2 A Yes.

3 Q And approximately how far is it from
4 your home to the winter pasture at this vantage
5 point along the north fence line?

6 A By way of road or by way of the crow
7 flies?

8 Q By way the crow flies; just straight?

9 A A mile. Maybe a tad more than a mile.

10 MR. DODGE: Your Honor, I should
11 apologize that it may be more difficult for the
12 jurors in the back to see these.

13 May I request an instruction, or--at
14 least--that they will be able to take these into
15 the jury room?

16 THE COURT: Of course they will be.

17 MR. MORGAN: If they're received in
18 evidence. They get to take everything that's
19 received in evidence.

20 THE COURT: For the benefit of those in
21 the back row, you may want to pass them to them
22 to observe.

23 MR. DODGE: Thank you.

24 (Whereupon, Plaintiff's Exhibit No. 26 was
25 marked for identification.)

1 A Yes.

2 Q Did you make any effort to measure the
3 height of the fence at any other place?

4 A Yes.

5 Q Where else?

6 A I measured the entire fence line.

7 Q And it was all about the same height?

8 A Very close.

9 Q And this was a month ago?

10 A Approximately a month ago. May have
11 been six weeks.

12 Q In your opinion, is a fence line that's
13 only 38 inches at the post high enough to keep a
14 horse from jumping or stepping over?

15 A No question about it. It is.

16 Q The posts, Mr. Hardman, in these
17 pictures, you testified in your deposition, were
18 about 30 feet apart; is that right?

19 A I said that they were. I thought they
20 were 25-- 20 to 30 feet.

21 Q In your deposition you said 30 Is
22 that right?

23 A I believe that question was asked a
24 number of times. And one time I may have said
25 30. I know other times I might have said 20 to

1 Q How many horses did you keep in the
2 pasture, Mr. Hardman?

3 A It varies.

4 Q In November 1989. Excuse me.

5 A It varies. Anywhere from 10 to 15.

6 Q As of November 19th, the day before the
7 accident, 1989, how many horses were in that
8 pasture?

9 A 13, 14.

10 Q And what types of horses were they?

11 A Quarter horse, paint horses.

12 Q Were there mares?

13 A Yes.

14 Q Some pregnant?

15 A Yes.

16 Q Were there Geldings?

17 A Yes.

18 Q What else?

19 A Yearlings.

20 Q Yearlings, and Geldings and pregnant
21 mares altogether?

22 A Yes.

23 Q Did the deer live in that winter
24 pasture sometimes?

25 A The deer moved back and forth in that

1 how old was that horse?

2 A Four years old.

3 Q And how long had it been involved in
4 training?

5 A Three years.

6 Q Three years.

7 Mr. Hardman, at the time of the accident
8 in-- excuse me, prior to the accident, at the
9 time you removed the horses from the pasture--
10 the summer pasture-- and moved them to the
11 winter pasture, approximately three weeks before
12 the accident, there was still feed left in the
13 summer pasture; is that right?

14 A There may have been some feed left, but
15 it was getting sparce.

16 Q In your deposition you said there was
17 some feed.

18 A There could have been some feed left.

19 Q How many horses have you raised over
20 the years, approximately?

21 A 30 plus. 25, 30.

22 Q With respect to the approximately 15
23 horses you have indicated were in the pasture on
24 the night of the accident, do you have an idea
25 of the collective value of those horses?

1 that correct?

2 A Yes. At an angle. It's not directly
3 east.

4 Q Thank you.

5 I have a couple more pictures I'd like to
6 show you quickly, Mr. Hardman, pictures taken
7 also the morning after the accident.

8 (Whereupon, Plaintiff's Exhibit No. 32 was
9 marked for identification.)

10 Q (BY MR. DODGE) Mr. Hardman, I'll show
11 you what's been marked as Plaintiff's Exhibit No
12 32 and ask you if you can identify that as a
13 picture taken the morning after the accident?

14 A Yes, it is.

15 Q And does that depict the north fence
16 line where you've testified the horses escaped?

17 A Yes, it does.

18 MR. DODGE: Your Honor, I'd move the
19 admission of Exhibit 32.

20 MR. MORGAN: No objection.

21 THE COURT: It may be received.

22 (Whereupon, Plaintiff's Exhibit No. 32 was
23 received into evidence.)

24 Q (BY MR. DODGE) And for clarification
25 purposes--

1 the one that has the culvert in it-- it would
2 appear that there are five strands of barb
3 wire.

4 A I believe so, yes.

5 Q Now, can you show us where this
6 picture-- where it's taken of, Plaintiff's
7 Exhibit No. 19?

8 A It's taken looking into what we call
9 the bridge, going this direction where the old
10 canal came through the property.

11 Q Could you write "canal" and draw to the
12 canal?

13 And as depicted in Plaintiff's Exhibit 19,
14 does the canal appear to be lower level-wise
15 than the ground itself?

16 A Yes, it does.

17 Q And so why did-- why were five strands
18 of barb wire placed in that area on Plaintiff's
19 Exhibit 19?

20 A So that we could fill in the gap so the
21 horses, or whatever, wouldn't walk underneath
22 the fence and get out of the pasture.

23 Q Now, I think in your testimony
24 yesterday there was mention of the summer
25 pasture; and in the summer pasture there were

1 yesterday that some parts of your property you
2 got the two strand barb wire, and other places
3 there might be three, four, or five.

4 Now, you did explain why you had five in
5 the area where the canal is located. For
6 example, let me show you Plaintiff's Exhibit 20.
7 Do you remember 20?

8 A Yes, I do.

9 Q Can you show us on your diagram where
10 this is taken, because this appears-- at least
11 at the lower portion-- to be a three strand barb
12 wire fence. Can you tell us what direction
13 that's going and where?

14 A That's this direction right here.
15 (Indicating.)

16 And this point-- this grade may be a little
17 higher in contour, and it definitely drops off
18 right here from the end of the railroad grade
19 down to this corner post. So I put three wires
20 in there, again because of the contour of the
21 ground.

22 Q Are there any places along the north
23 fence line that there's three strands of barb
24 wire?

25 A The fence comes along on a flat area,

1 then it drops down a hill going to the river.
2 After it drops down the hill, there are, again,
3 washes, or what you might say a wash that it
4 goes across. And I have more at that point
5 than-- more than two, where it crosses through a
6 deep contour in the ground.

7 (Whereupon, Defendant's Exhibit No. 33 was
8 marked for identification.)

9 Q (BY MR. MORGAN) I'll show you what has
10 been marked as Defendant's Exhibit 33. Is that
11 what you just described?

12 A This fence here.

13 Q Is that that fence there, the three
14 strand?

15 THE COURT: Counsel, can we retrieve
16 that document? It should be remarked as number
17 34 instead of 33 for the record.

18 (Whereupon, Defendant's Exhibit No. 33 was
19 remarked as Defendant's Exhibit No. 34.)

20 THE COURT: Thank you, counsel.

21 Q (BY MR. MORGAN) Do you know where
22 Exhibit 34 is taken?

23 A It looks like it's taken from this
24 proximity here, taken in that direction there.

25 Q Across the diagonal portion of the

1 Q Post number two.

2 A Right.

3 Q And then exhibit-- Plaintiff's Exhibit
4 33-- and I'm just going to kind of hold them up
5 next to 32-- is there-- is the sagebrush the
6 same or can you tell?

7 A It looks the same.

8 Q Are you an expert on sagebrush?

9 A No. But it's hard to tell. It's hard to
10 tell.

11 Q Are you able to tell what's represented
12 in the foreground of either Exhibits 32 or 33,
13 what the picture-- I mean the soil--

14 A The only thing, there's some
15 indentations in the foreground here that could
16 be tire tracks, is all I can say.

17 Q With regards to Exhibit 35, we did see
18 a picture of pole number two. And when you were
19 there on the morning following this accident--
20 which would be November 21, 1989-- did that pole
21 have a top strand of barb wire wrapped around it
22 or a bottom strand?

23 A No.

24 Q What was the case with pole number one
25 and pole No. 3; did they have a top strand and a

1 bottom strand wrapped around it?

2 A No.

3 Q Where was the wire?

4 A Should I draw it?

5 Q Yeah.

6 A The wire came off of post number four

7 and came out into the field like so. There were

8 two of them. This is on the inside of the

9 pasture. (Indicating.)

10 Q Could you write "wires"?

11 A The other wires-- do you want me to

12 draw the other?

13 Q Between four and five?

14 A Yeah.

15 Q And what about five and six?

16 Now, did you observe tire tracks that

17 morning?

18 A Yes, I did.

19 Q Where were the tire tracks? They were

20 in between two and three?

21 A As I recall, they were--

22 Q And could you tell if they were old

23 tire tracks or new tire tracks?

24 A They had-- I didn't get down and look

25 at them. I'm not a track expert anyway.

1 This ground is quite sandy. If they would
2 have been very old at all, they would have been
3 blown in. You couldn't have seen them.

4 It was in the fall of the year. The grass
5 was dry; short. So whether they were-- if the
6 track was made right after it's made and you
7 look at it today or look at it three days from
8 now, to the normal person it would look the
9 same, if you don't know what a fresh or old tire
10 tracks looks like.

11 MR. MORGAN: We will offer into evidence
12 Defendant's Exhibit Number 35 for illustrative
13 purposes.

14 THE COURT: Any objection, counsel?
15 It's for illustration.

16 MR. DODGE: No objection.

17 THE COURT: It may be received.

18 (Whereupon, Defendant's Exhibit 35 was
19 received into evidence.)

20 MR. MORGAN: You can take your seat.

21 Q (BY MR. MORGAN) You mentioned that you
22 had made some actual measurements.

23 A Yes, I did.

24 Q And did you record them?

25 A Yes, I did.

1 A Yes, it does.

2 Q Now, how do you know that the distance
3 between the poles and the height of the wire is
4 closer to being accurate as to the way it was on
5 November 20, 1989 than the estimates or the
6 approximations you were asked to give at the
7 time your deposition was taken?

8 A When they took my deposition, of course
9 I had no idea what questions they would be
10 asking me. So I had no way to prepare or to
11 examine what the height of the wires were.

12 And I looked at the pictures, and they
13 asked, " Is it approximately-- does it look the
14 same?" Not knowing what they're talking about
15 basically," Yes, it does kind of look the same."

16 They asked what the distance was. It seems
17 like I said 12 to 14 inches off the bottom and
18 maybe 12, 14 or 16 between the wires. Strictly
19 an estimate on my part what they may have been.

20 I decided that it seems they were putting
21 such emphasis on that, I'd go measure the fence,
22 know exactly what it was.

23 So this fall, after I did my annua fall
24 maintenance on the fence, which I always do
25 before I put the horses in, after the wire was

1 the same as barb wire without the barbs sticking
2 out on it. Barbs are about a quarter inch long.
3 They hurt. You can't take a hold of it with your
4 hand. It's a very severe fence. If you were to
5 put smoothe wire on there, yes.

6 Myself, I would put a dancer between the
7 posts, because with smoothe wire, the horse can
8 work the fence. He could step over it or jump
9 over it, maybe. But he could work it. He could
10 push on it. He could do something to the fence.
11 Barb wire, he'll not do that because of the pain
12 that's associated with the barbs coming from the
13 fence. (Indicating.)

14 Q Have your horses ever pushed through a
15 barb wire fence?

16 A I've never known my horses to push
17 through a barb wire fence, no.

18 MR. MORGAN: Could I have that exhibit
19 number, please?

20 (Whereupon, Defendant's Exhibit No. 38 was
21 marked for identification.)

22 THE WITNESS: They do have to pay me,
23 don't they, judge, for that information?

24 Q (BY MR. MORGAN) I'll show you what has
25 been marked as Defendant's Exhibit 38. Is that

1 volunteer grain-- every winnow has volunteer
2 grain in it. It makes very good feed.

3 Q Was that available to the horses?

4 A Yes. I always leave that for the
5 horses.

6 Q Did you also have any hay down in the
7 winter pasture in November of 1989?

8 A Yes. In one area I stack hay that I
9 cut in that area so I don't have to transport it
10 to my home, which is by the road a mile-
11 and-a-half or so.

12 Q And so can the horses get to the hay or
13 do you need to go down there and get the hay to
14 the horses?

15 A That hay that I leave there is there
16 for two purposes. One, I sell some of it; two, I
17 use it to feed my horses in the winter. Like,
18 for example, now I've just started feeding them.
19 If the snow gets very deep, then I have to
20 start feeding the horses. And they will still--
21 in the winnows of the grain, as deep as the snow
22 is now, they'll paw through and they'll still be
23 fat. But I like to supplement them.

24 So I built a two-strand barbed wire fence
25 around my hay field-- excuse me-- around my hay

1 stack, and then I ride over to the hay stack and
2 feed them from the hay stack.

3 Q Okay.

4 With regard to the horse that was involved
5 in the accident, you were asked some questions
6 about that particular horse and the value of
7 that particular horse. I think you said eight
8 to \$10,000.

9 Could you tell us if that horse had won any
10 awards?

11 A Yes. That horse had been shown for
12 three years in the Quarter Horse Association,
13 traveled four different states, been a
14 professional horse trainer for approximately
15 two-and-a-half of the three years. He had won
16 numerous first place awards.

17 If you win a first place award in classes
18 according to age and sex, then you have an
19 opportunity to come in and stand with all the
20 other first place winners in the show in the
21 alter class, which is yearling-- excuse me--
22 Wingling, Yearling two, three, four and aged
23 horses.

24 And then they pick what they call a Grand
25 Champion and a Reserved Grand Champion, which is

1 Q Did you feel that the fence there was
2 adequate to hold your horses?

3 A I felt the fence there was very
4 adequate to have my horses.

5 Q Do you know what kind of fence you'd
6 have to build to keep trespassers out?

7 A I don't think they've made one yet that
8 will keep trespassers out.

9 Q In January of 1992 you indicated that
10 there were no horses in the pasture; is that
11 right?

12 A Yes.

13 Q And you indicated there was another
14 fence that sectioned off a part of the winter
15 pasture.

16 Could you come to Exhibit No. 6 and show us
17 where that fence is?

18 A There's a roadway right here that you
19 can see indicated by this line. Excuse me.

20 This dark area here and this dark area here
21 are the two fields that I farm. This road way
22 goes over here, comes through a gate right here.

23 There's a fence that comes along the
24 railroad right-of-way. An old fence that comes
25 along the railroad right-of-way, which used to

1 duck hunters. We used to have problems with
2 pheasant hunters, dove hunters, and so on,
3 because they had access to all this area. Camp
4 Williams had no concern with people hunting on
5 their ground or using their ground-- any of
6 their ground anywhere.

7 If you may recall, five, six years ago a
8 family went actually over here at Camp
9 Williams. And one of their children picked up
10 an explosive and it killed him. And they're
11 still in a lawsuit over it.

12 But the point is, because of that, Camp
13 Williams is now-- for the last five, six years--
14 have totally closed off their ground to anyone
15 going on to their property.

16 As a result of that, we worked with Camp
17 Williams and agreed-- they didn't want people in
18 here. They were having the same problem. So we
19 agreed-- they helped to put up gates. We put a
20 gate at this intersection--

21 Q Would you just write "gate".

22 A This is a canal. Our present canal,
23 which replaced this canal that we're talking
24 about here, put a gate right there. Locked
25 gates; heavy gates.

1 We come up to Highway '68, Redwood Road,
2 there's an entrance into Camp Williams at this
3 point. There was a gate right there. And so now
4 there's-- literally there's no access into the
5 area--

6 (Off the record).

7 THE WITNESS: Literally there's no
8 access into this area unless people enter into
9 it through one of these locked gates or they
10 come up through Camp Williams itself down into
11 the-- into their main building area.

12 (Indicating.)

13 Q Do they have to pass a guard gate
14 there?

15 A As they come into there, there is a
16 guard gate there. 24 hours a day they have
17 guard service. And the people are supposed to
18 resister with the guard, tell them what they're
19 doing, and then they will let those people come
20 down into this area to go fishing. Fishing only;
21 not hunting. They've never allowed anyone to go
22 hunting.

23 So if someone is to access this property,
24 which is fenced and posted properly with no
25 trespassing signs and paint, they either have to

1 break one of the locks, go through here or
2 access through the guard gate at Camp Williams.

3 Now, they can-- they cannot drive in
4 through these fields this way, because of the
5 ditch that goes along. It's a cement, deep
6 ditch. They could not drive through there.

7 From this point right here up to Camp
8 Williams, they've placed huge boulders, some of
9 them as tall as this easel right here. They've
10 placed them along the road right here so that
11 the four-wheel drive people can't drive just off
12 the highway access to the field to the road and
13 drive down.

14 They have signs on all their gates, plus
15 they have other signs along the roadway that
16 says " No Trespassing". It's very well marked.
17 If someone comes in, then they are in the same
18 situation on mine.

19 So before they ever get to my property,
20 they've already possibly broken the law by
21 trespassing onto Camp Williams before they get
22 to that point.

23 MR. MORGAN: Thank you. That's all.

24 THE COURT: Any redirect, counsel?

25 MR. MORGAN: Let me just-- That's all

1 A May. That's correct.

2 Q May of 1991. So what did you do and
3 when did you do it with regard to painting any
4 of your poles?

5 A The florescent paint that you put on a
6 pole will not last too long a period of time. In
7 fact, after you paint it, it turns white after a
8 period of time. And--

9 Q How long? A winter, two winters?

10 A Through the winter. A florescent--
11 florescent does not last in paint very long.
12 Every fall before the deerhunt, I always go
13 around and post signs or post the property.

14 Q Now, with the-- in Plaintiff's Exhibit
15 32, which was the one taken the morning after
16 the accident--

17 A Yes.

18 Q You've indicated that that is pole
19 number two with the corner post being pole
20 number one.

21 A Yes. It could have been, yes.

22 Q If that's pole number two, then you
23 count three, four and five for the pole, the
24 unusual one?

25 A Yes.

1 Q And did you have a distance between
2 pole number two and three of 22 feet?

3 A Yes.

4 Q And how about poles number three and
5 four?

6 A 18.

7 Q Was there a distance of 40 feet between
8 the two poles?

9 A Not to my knowledge, there wasn't, no.

10 Q And you had been there at 4:30 P.M. on
11 the evening of-- afternoon of November 20, 1989;
12 is that correct?

13 A Yes, I was.

14 Q And at that time did you make a visual
15 personal observation of the fence line on the
16 north end?

17 A Yes, I did.

18 Q And at that time what did you see in
19 terms-- did you see two poles where there was a
20 distance of 40 feet?

21 A No, I did not.

22 Q And did you daily check your fences the
23 two weeks prior to the accident on November 20?

24 A Yes, I did.

25 MR. MORGAN: That's all.

1 THE COURT: Would it be a good time
2 for a break?

3 MR. DODGE: Your Honor, I need to
4 follow-up with some redirect.

5 THE COURT: Okay. Quickly. Well,
6 whatever time is necessary.

7 MR. DODGE: It won't be long.

8 RE-REDIRECT EXAMINATION

9 BY MR. DODGE:

10 Q Mr. Hardman, in your deposition do you
11 recall being asked whether or not-- whether or
12 not any of the poles were bent the morning
13 after?

14 A It seems like they did.

15 Q Your response was, "No, they were not";
16 is that correct?

17 I direct your attention to page 109 of your
18 deposition. If you'll turn to line 13. I'll read
19 parts of it to give it a little context.

20 " So the wires had been pulled off
21 three poles?"

22 Your answer was:

23 "Yeah."

24 "Would that be including the corner
25 post, or the corner post and-- "

1 "No, that doesn't include the corner
2 post."

3 Question:

4 " Three more? Were the posts bent?"

5 Your answer?

6 A "No."

7 Q Did you observe any posts lying on the
8 ground that morning?

9 A I didn't observe any lying on the
10 ground, no.

11 Further, I believe in the deposition, I
12 believe I corrected myself and said that the
13 three posts that the wires were off did include
14 the corner post.

15 Q Mr. Hardman, you said that three times
16 a week you would inspect it.

17 Will you stand up and show the jury--

18 A Would you say that again, please?

19 Q You said that three times a week you
20 would inspect this fence immediately preceeding
21 the accident; is that correct?

22 A I said every day.

23 Q Oh. Every day, then?

24 A We're talking about two to three weeks
25 before the accident, yes.

1 Q So there is a difference between bent
2 and leaning?

3 A Yes, there is.

4 Q And would you logically go 23 feet 18
5 feet and then suddenly go 40 feet?

6 A No.

7 Q You're sure about that?

8 A I'm very sure about that.

9 Q How sure are you about the fact that
10 you saw that the fence was in a good state of
11 repair on the northwest corner at 4:30 P.M. on
12 November 20, 1989?

13 A Very sure.

14 Q Now, you gave an estimate in the
15 deposition. You've been out there since that
16 time. Having gone out there, do you have a
17 better idea or better estimate as to the
18 distance from your car to being able to see like
19 pole number one, two and three at the northwest
20 corner?

21 A I have not measured it. I wouldn't
22 believe that it's 90 feet. It's-- being caught
23 off guard and asked these questions, it's very
24 difficult to come up with an exact answer. And
25 all you can do is give an estimation at the time

Tab H

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH

JULIA LEE ASKEW,

Plaintiff,

vs.

PAUL HARDMAN,

Defendant.)

)
)
)
)
) Case No. 91-0400665
) (Oral Ruling
) During Trial)
)
)

January 13, 1993

BEFORE: THE HONORABLE LYNN DAVIS
FOURTH DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff:

Mark F. James
Gary A. Dodge
KIMBALL, PARR, WADDOUPS,
BROWN & GEE
185 South State Street
Suite 1300
Salt Lake City, Utah 84147
Telephone: (801)532-7840

For the Defendant:

Stephen G. Morgan
Mitchel T. Rice
MORGAN & HANSEN
Kearns Bldg., 8th Floor
136 South Main Street
Salt Lake City, Utah 84101
Telephone: (801)531-7888

Reported by: Beverly Lowe RPR/CSR

Center Court Reporting
40 South 100 West
Suite 203
Provo, Utah 84601
Telephone: (801)373-4646

1 P R O C E E D I N G S

2 THE COURT: Your next one, Counsel?

3 MR. DODGE: Well, one other. That is with
4 respect to the photos that were taken, and your
5 Honor, this is something we should bring up without
6 the jury, in any event. There was a suggestion
7 made by Mr. Hardman in his direct testimony on my
8 case that those photos were misleading. I'll
9 intend to ask Mr. Hardman whether those pictures
10 were taken by plaintiff, or by someone in his
11 behalf.

12 I certainly don't intend to get into
13 insurance, but when they are going to claim those
14 photos are misleading, the jury is entitled to know
15 we didn't take them and those are the areas that I
16 intend to get into with Mr. Hardman.

17 THE COURT: I think you can anticipate an
18 objection there, but otherwise it appears to be
19 proper.

20 (Whereupon several other matters were discussed)

21 MR. DODGE: Your Honor, one more thing on
22 the pictures. We have absolutely no intent of
23 trying to get insurance inserted into this. We
24 believe because they called into question they used
25 words like "trick photography" and --

1 THE COURT: I don't think they used that.
2 They said the photo doesn't really show --

3 MR. DODGE: They certainly said pictures
4 can be deceiving, and Mr. Hardman on the stand said
5 that from that angle you may not be able to see
6 it. There's a clear suggestion to this jury that
7 somehow we're hiding a pole in that picture.

8 THE COURT: Counsel, you had plenty of
9 opportunity to inquire relative to that and ask
10 follow-up questions. Why couldn't you've asked it
11 at that point in time and that would defuse the
12 issue before the jury.

13 MR. DODGE: We would have had the same
14 objection, I suspect. And your Honor, to the
15 extent necessary, I'll move for permission to
16 reopen for that limited person like he did. I
17 don't think it's appropriate -- like he did on the
18 one witness, Mrs. Hardman. I don't think it's
19 appropriate to shut that out because you think that
20 could have been brought in direct. That's not
21 going to be prejudicial except to let them know we
22 aren't the ones out taking pictures --

23 THE COURT: The possibility of prejudice
24 certainly outweighs any probative value of making
25 inquiries further regarding something that happened

1 three or four days ago. I mean there's a
2 possibility you can get a mistrial, Counsel, on
3 this case by that question.

4 MR. DODGE: Your Honor, I believe that
5 that could easily be done in a way that that
6 wouldn't happen. Simply a question that, did the
7 plaintiff take these pictures or anyone on
8 plaintiff's behalf. No. That's all we need to
9 ask. We think we ought to have --

10 THE COURT: Remind me again why that
11 question wasn't asked when he was on the witness
12 stand.

13 MR. DODGE: I don't know why it wasn't
14 asked. I didn't ask it. And so I'm asking
15 permission. In fact I was going to do it through
16 another photo of his gate that hadn't yet been
17 introduced that was another one of the ones taken
18 that morning, then simply say that this picture and
19 the prior pictures that were introduced, the black
20 and whites of the morning before, those were not
21 taken by plaintiff or by anyone on plaintiff's
22 behalf. I submit that that can be done without any
23 risk of prejudice.

24 THE COURT: Mr. Morgan, anything further?

25 MR. MORGAN: You know if you don't ask

1 questions in depositions you can't say, "Well, gee
2 we didn't know. We couldn't have anticipated it."
3 If you don't ask questions when your asking
4 questions about the photos and then you want to
5 come back and somehow put it on in rebuttal and
6 highlight and bring attention to it, we think
7 that's unfair and prejudicial.

8 THE COURT: Okay. Let's go through the
9 ones I believe you can.

10 (Whereupon a long discussion and different rulings
11 were made as to other issues)

12 THE COURT: Anything further?

13 MR. MORGAN: Yes, your Honor. Will you buy
14 the fact that I'm going to make a motion in limini
15 with regard to the photos, that there should not be
16 a question asked of Mr. Hardman with regard to the
17 photos?

18 THE COURT: Which photos?

19 MR. MORGAN: The photos that were taken the
20 day after the accident by Mr. Hardman.

21 THE COURT: I thought I ruled on that. I
22 said that it would be too prejudicial, and the
23 issue of insurance -- I don't want to risk a
24 mistrial in this case seven days into the trial.
25 (Conclusion)

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COUNTY OF UTAH)

BEVERLY A. GARDNER
NOTARY PUBLIC - STATE OF UTAH
1641 SOUTH 350 WEST
OREM, UTAH 84401
COMM. EXP. 04-1-8

Tab I

Copy

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH

JULIA LEE ASKEW,

Plaintiff,

vs.

PAUL HARDMAN,

Defendant.)

)
)
)
)
) Case No. 91-0400665
) (Motion to Compel)
)
)
)

December 28, 1992

BEFORE: THE HONORABLE LYNN DAVIS
FOURTH DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff:

Mark F. James
Gary A. Dodge
KIMBALL, PARR, WADDOUPS,
BROWN & GEE
185 South State Street
Suite 1300
Salt Lake City, Utah 84147
Telephone: (801)532-7840

For the Defendant:

Stephen G. Morgan
Mitchel T. Rice
MORGAN & HANSEN
Kearns Bldg., 8th Floor
136 South Main Street
Salt Lake City, Utah 84101
Telephone: (801)531-7888

Reported by: Beverly Lowe RPR/CSR

Center Court Reporting
40 South 100 West
Suite 203
Provo, Utah 84601
Telephone: (801)373-4646

P R O C E E D I N G S

1
2 MR. JAMES: Could I now address, Judge, the
3 plaintiff's motion to compel?

4 THE COURT: Well, we've got a motion to
5 continue, and then -- based upon all of these
6 others -- that's next. The plaintiff's motion to
7 compel and then all the spinoffs from that. As to
8 Harmon's tape and also to the deposition of
9 Mr. Harmon.

10 MR. JAMES: Early in the morning after the
11 accident that's at issue in this case Mr. Hardman,
12 the defendant, claims that he went to the pasture
13 where his horses had been located prior to the
14 accident. He claims that on that occasion he made
15 several relevant observations.

16 First he claimed that he observed that the
17 fence was down. Second, he claimed that he
18 observed tire tracks in the location where the
19 fence was down. Third, he has testified that he
20 observed evidence of a fresh deer kill about a
21 quarter of a mile away from where the fence was
22 down.

23 Based on these observations, the defendant
24 has alleged in this case that poachers broke his
25 fence down and allowed his horses to escape. As

1 the Court is aware, defendant has filed a motion
2 seeking to have this Court place these unidentified
3 trespassers on the special verdict form in this
4 case.

5 Three people saw the pasture on the day
6 following the accident, and prior to the time that
7 Mr. Hardman has testified he fixed his fence.
8 Those three people were Mr. Hardman; Jerry Monson,
9 a deputy sheriff from the Utah County Sheriff's
10 Office, and Robert Harmon, who is a claims adjuster
11 for defendant's insurer Utah Farm Bureau.

12 Mr. Harmon took several pictures and
13 recorded a conversation between he and Mr. Hardman
14 that occurred while they were there at the pasture.

15 Defendant has produced the pictures that
16 Mr. Harmon took but refuses to produce the recorded
17 conversation. He also refuses to allow
18 Mr. Harmon's deposition to be taken.

19 First, your Honor, I'd like to address if
20 I could Mr. Harmon's deposition. In opposing the
21 plaintiff's attempt to depose Mr. Harmon, defendant
22 presents essentially few arguments. First that an
23 earlier protective order entered by Judge Ballif of
24 this Court somehow prohibits that deposition. And
25 second, that Mr. Harmon's knowledge and

1 observations constitute work product.

2 In February and March of 1992 we caused a
3 subpoena to be served on Utah Farm Bureau, a
4 subpoena duces tecum. The subpoena did not seek
5 testimony, but only documents. In these the
6 subpoena specifically specified that if documents
7 were produced prior to the taking of a deposition,
8 that a deposition would not occur.

9 Defendant thought Judge Ballif granted a
10 protective order. The ruling did not address
11 Mr. Harmon's deposition. That issue was not before
12 the Court at that time. The plain language of the
13 Court's earlier order makes clear that it pertains
14 only to items contained in Utah Farm Bureau's file
15 in communications with legal counsel that occurred
16 after the date of the accident.

17 Now, Judge, we have addressed in our
18 memorandum the Hornbook principle that protective
19 orders must be narrowly drawn and precise. I won't
20 address that case law further because I believe the
21 plain language of the protective order at issue in
22 this case makes clear that it was not intended to
23 prevent Robert Harmon's deposition from being
24 taken.

25 Defendant also seeks to prevent

1 Mr. Harmon's deposition from being taken, based on
2 an allegation that his knowledge and observations
3 constitute work product. The universally accepted
4 principle of the work product doctrine does not
5 protect underlying facts.

6 Indeed the case upon which defendant
7 placed principle reliance with United Farm Bureau
8 Mutual Insurance Company, a case that was decided
9 by the Indiana Court of Appeals makes this
10 principle very clear.

11 Perhaps more importantly, though,
12 Mr. Harmon's factual knowledge does not even
13 qualify as work product under Utah law. In a case
14 entitled Gold Standard v. American Resources
15 Corporation, a 1990 case decided by the Utah
16 Supreme Court. The Court stated that three
17 essential elements must be established under Utah
18 law for materials to be protected by the work
19 product doctrine. The Court says the material must
20 consist of documents or tangible things.

21 Mr. Harmon's factual knowledge, the
22 observations that he made of the fence, the pasture
23 of the accident scene on the morning following the
24 accident do not constitute documents or tangible
25 things.

1 The party opposing discovery bears the
2 burden of establishing good cause for the entry of
3 a protective order. In this case we would submit,
4 your Honor, that the defendant has not established
5 good cause. Has not established that Mr. Harmon's
6 factual knowledge and first-hand observations of
7 issues that are critical to this case somehow
8 constitute work product.

9 Now, even assuming that Mr. Harmon's
10 knowledge and observation somehow did constitute
11 work product, he still should be ordered to appear
12 for his deposition. The Utah Supreme Court in the
13 Gold Standard Case recognized that materials
14 protected by the work product doctrine must be
15 produced if there exists a substantial need for
16 their production.

17 The Court in Gold Standards stated in that
18 regard, "Satisfying the requirements of the work
19 product doctrine does not automatically guarantee
20 protection. If the party seeking discovery can
21 demonstrate substantial need for the materials and
22 that the materials or their equivalent cannot be
23 obtained without substantial hardship, the party
24 will be entitled to these materials."

25 Robert Harmon was one of only three people

1 to observe the pasture on the day after the
2 accident. Jerry Monson of the Utah County
3 Sheriff's Office, as Mr. Morgan previously noted,
4 has virtually no recollection of what he observed
5 on the day or the morning after the accident.

6 Mr. Paul Hardman has less than a clear
7 recollection regarding what he observed on the
8 morning following the accident.

9 Robert Harmon took the few pictures that
10 we have that are contemporaneous with the
11 occurrence of the accident. His testimony is
12 necessary to authenticate the pictures, and quite
13 frankly, your Honor, it is impossible to tell what
14 supposedly is depicted in several of the pictures.

15 I only have one set of pictures. There
16 were seven pictures provided to us. These are
17 copies of the polaroid print. As we have examined
18 the photographs we are unable to tell what was
19 intended to be depicted --

20 THE COURT: Did you attempt to authenticate
21 the pictures through the testimony of the defendant
22 through deposition or through the officer involved?

23 MR. JAMES: I did not through the officer
24 involved. I showed these pictures to Mr. Hardman.
25 I asked him with respect to several of the pictures

1 what was depicted in the picture. He didn't know.

2 There was a couple of interesting things I
3 would note, your Honor. For example, this picture
4 -- and I'll give these to the Court in a moment --
5 this picture shows a circle with what appears
6 obviously to be an "E" painted on the road in the
7 vicinity of the accident. If you look at the
8 police report there is no "E" painted on the road.
9 We don't understand what that "E" represents.

10 There is a picture taken of a post that we
11 have been able to identify on the fence, but we
12 don't understand why this post has relevance. Why
13 Mr. Harmon when he took these photographs focused
14 on this particular post. He has placed an arrow
15 depicting something in the photograph. If I may
16 approach, your Honor.

17 THE COURT: Sure.

18 MR. JAMES: I asked Mr. Hardman what was
19 depicted in several of these photographs, and
20 again, he didn't know. He said he didn't know what
21 was trying to be demonstrated by some of these
22 photographs.

23 So, your Honor, even assumi that
24 Mr. Harmon's's testimony somehow did onstitute
25 work product, we would submit there exists a

1 substantial need for the taking of his deposition.

2 Again he was one of three people who saw
3 the pasture contemporaneous with the occurrence of
4 the accident. The other two have less than a clear
5 recollection, and I'll discuss that a little
6 further in connection with the recorded statement.
7 And if I could, your Honor, I'd like to take a
8 moment and address the recorded statement.

9 THE COURT: Okay, but you have relied upon
10 a recorded statement in your arguments against the
11 motion for summary judgment.

12 MR. JAMES: No, I don't believe that's
13 accurate.

14 THE COURT: I think you have. You have
15 looked at it in terms of the number of times the
16 horses had escaped, three times I think --

17 MR. JAMES: No, let me distinguish. What
18 we have relied on was the police report, the
19 accident report that Jerry Monson, the sheriff's
20 deputy from Utah County prepared.

21 What we're talking about now with respect
22 to the recorded statement is that on the morning
23 following the accident --

24 THE COURT: We're on common ground. I
25 thought that you were making reference to the

1 written statements of Deputy Jerry Monson. Your
2 reference is to the tape recording of the
3 discussion that occurred on the morning between the
4 defendant and Mr. Robert Harmon; is that correct?

5 MR. JAMES: That's correct. I'm switching
6 now from taking Mr. Harmon's deposition to seeking
7 to have this court order production of the tape
8 recorded statement that Mr. Harmon took of his
9 conversation with Mr. Hardman on the morning
10 following the accident.

11 THE COURT: Okay.

12 MR. JAMES: Courts have recognized that
13 contemporaneous statements are unique catalysts in
14 the search for truth, and accordingly many courts
15 have ordered production of such statements.

16 Defendant has attempted to argue that
17 Mr. Hardman's recollection three years after the
18 accident, or approximately three years after the
19 accident somehow is substantially equivalent of the
20 recorded statements taken on the morning following
21 the accident within hours of the accident.

22 Portions of Mr. Hardman's testimony have
23 been set forth in the respective memoranda of the
24 parties. I believe that testimony sets forth the
25 fact that Mr. Hardman suffers from less than a

1 clear recollection of what he observed on the
2 morning following the accident.

3 Mr. Hardman's testimony is replete with "I
4 don't remember." "I don't recall." While he
5 recalled general observations he could not recall
6 specific details.

7 THE COURT: I thought, Counsel, that the
8 inquiry in the deposition was fairly clear
9 regarding details of what he had shared with
10 Mr. Harmon.

11 MR. JAMES: If you read that, your Honor --

12 THE COURT: I mean this is not just a
13 cloudy saying "I don't remember." He talked about
14 specifics on that date. He mentions those and
15 there's some inquiry, either by you or by your
16 co-counsel, whether there were other matters that
17 were discussed with Mr. Harmon and I believe -- he
18 responds, I believe, that this is fairly much of
19 what we talked about on that morning, and it's in
20 detail.

21 MR. JAMES: Let me tell you what he says.
22 I have it here.

23 "Do you have a specific recollection that
24 what you told Mr. Harmon was what you told me
25 today? " "What I can remember, yes." "Now, when you

1 say 'What I can remember,' are there parts you
2 don't remember of the conversation you had with
3 Mr. Harmon?" "Not that I remember there's not."

4 Well, essentially what Mr. Hardman is
5 saying, "I tell you what I remember. " But I don't
6 know, your Honor, if there are things that he
7 doesn't remember. And in fact, at one point during
8 his deposition he struggled to correct some
9 testimony and he said, "I'm older. My mind is
10 going. I realize this."

11 We realize at the time your recollection a
12 couple of years later isn't what it is the morning
13 following the accident where you have a vivid
14 picture of what you've seen.

15 Further, there are various inconsistencies
16 that exist between the testimony of Mr. Hardman and
17 that of his own witnesss.

18 Paul Hardman testified that his horses had
19 only gotten out of the pasture once in the weeks
20 preceding the accident. Mr. Hardman's wife
21 testified that the fences had been down twice.

22 Jerry Monson's report reflected that
23 Mr. Hardman told him that the fence had been taken
24 down three times in the weeks preceding the
25 accident. Paul Hardman --

1 THE COURT: Tell me, Counsel, what does
2 that prove? Let's say you get the tape and it says
3 two time or three times or once?

4 These other statements were made fairly
5 contemporaneous with the event to Deputy Jerry
6 Monson. How would the statements made to the
7 insurance agent or representative of the insurance
8 agent -- seems to me that it cuts the other way.
9 That you are saying -- how is that contemporaneous
10 statement, if it differs from that which was
11 represented to Deputy Jerry Monson, going to help?

12 MR. JAMES: It's not necessarily going to
13 help, but I think I'm entitled to know what he said
14 at the time. Maybe he said they would have escaped
15 four times and that he told Deputy Monson that the
16 fence had only been down three times. I guess it's
17 a little bit related to the medical documents. I
18 just don't know until I can see it.

19 But it was a statement given
20 contemporaneous with the occurrence of a critical
21 event at issue in this lawsuit as opposed to me
22 needing to rely on Mr. Hardman's deposition
23 testimony given approximately three years later.

24 Mr. Hardman testified in his deposition
25 that the wire had been unwound from the fence. His

1 daughter Amanda testified, however, that she
2 specifically recalled Mr. Hardman stating on the
3 day after the accident that the wire had been cut.

4 Defendant has argued in his opposition
5 memorandum that we have Jerry Monson's police
6 report. That constitutes the substantial
7 equivalent of Mr. Hardman's recorded statement
8 given to Robert Harmon.

9 Defendant again ignores, however, that
10 Jerry Monson had a very poor recollection of what
11 some of the things in that police report meant.

12 THE COURT: That's at the time of the
13 deposition. But we do have the report itself.

14 MR. JAMES: I understand. But for example,
15 your Honor, Mr. Monson put in his report that he
16 observes old tire tracks, which is an interesting
17 observation in light of the contention that
18 trespassers had broken down the fence the night
19 before. When he was asked, "What do you mean old
20 tire tracks" he said "I can't remember."

21 THE COURT: How is the tape going to help
22 you out regarding that? I read that portion of the
23 deposition. He said "old"; it might mean old,
24 might mean new, might mean yesterday, might mean
25 tomorrow. It was the most inconclusive statement I

1 have ever heard regarding old tire tracks. He
2 didn't know what old tire tracks meant.

3 MR. JAMES: I think Mr. Hardman's own
4 observations made at the time are relevant as to
5 what he saw; whether the tracks were old or new,
6 whether the fence was cut down or taken down.

7 I think, also, your Honor, it cannot be
8 fairly assumed that Mr. Monson recorded every
9 detail in his report that may have been relevant to
10 the lawsuit.

11 I think it's fair to suggest, your Honor,
12 that there would be much more discussed and much
13 more contained in Mr. Hardman's conversation with
14 Mr. Harmon than in a brief report prepared by a
15 disinterested third party, Jerry Monson.

16 THE COURT: Well, if the Court accepts that
17 reasoning, then in every auto accident, you simply
18 state they're prone to make a more thorough
19 statement to an insurance company than they are to
20 law enforcement, which is very busy on some days
21 because of multiple accidents because of the
22 weather, et cetera, and all of that can come in by
23 virtue of that reasoning? That just doesn't --

24 MR. JAMES: I'm not suggesting that, your
25 Honor. But what I am suggesting is that every case

1 is factually specific, and in this case we have a
2 very brief report prepared by Jerry Monson.

3 If he'd come in for his deposition and
4 say, yeah, I remember my conversation with
5 Mr. Hardman and we talked about this, and he said
6 this and that, and in addition to what's contained
7 in the report we discussed these things, obviously
8 I couldn't put it all in the report. I'm a law
9 enforcement official. I want to get this thing
10 done. That would be a very different issue.

11 But we had Jerry Monson come in, and as
12 you indicated, he didn't remember. He had
13 virtually no recollection. Mr. Harmon, the
14 third-party, who witnessed that, who saw the fence,
15 who went down and made observations of what was
16 there, today we have been prevented from taking his
17 deposition.

18 I think perhaps more important, and I
19 mentioned this, Jerry Monson's knowledge of facts
20 potentially relevant to this case, even when his
21 memory was the freshest, certainly was far less
22 than that of defendant Paul Hardman.

23 Mr. Hardman controlled the pasture, he had
24 knowledge regarding trespassing problems, he had
25 knowledge regarding the history of the fence, his

1 horses located in the pasture and other relevant
2 facts.

3 I can't represent to the Court that those
4 things are contained in the report, but I think
5 it's fair to presume that it's much more likely
6 that they are contained in the report than they
7 were in the report prepared by the police officer.

8 Professor Moore summarized the law in this
9 area as follows: To justify disclosure a party
10 must show the importance of the information in the
11 preparation of this case and the difficulty the
12 party will face in obtaining substantial equivalent
13 information from other sources if production is
14 denied. The clearest case for order and production
15 is when crucial information is in the exclusive
16 control of the opposing party. This is true, for
17 example, when one party has photographs of the
18 scene immediately following an accident.

19 Statements contemporaneous with the
20 occurrence are, in a sense, unique, and can not be
21 duplicated by later interviews or deposition.

22 Professors Wright and Miller have noted,
23 "No one doubts that production should be ordered if
24 the witness has a faulty memory and no longer
25 remembers details of the events."

1 There is now substantial body of authority
2 that goes beyond this and suggests that statements
3 taken from a witness at or about the time of the
4 occurrence described in them are unique in that
5 they provide an immediate impression of the facts.

6 On this view, mere lapse of time is in
7 itself enough to justify production of the
8 materials otherwise protected work product.

9 Goes on to say that the notion of memory
10 fades with the passage of time and is amply
11 supported by psychological studies as well as
12 common sense. Thus the advisory committee in
13 drafting Rule 26(b)3 have wisely accepted the
14 notion that lapse of time in itself may make it
15 impossible to obtain the substantial equivalent of
16 the materials sought.

17 There's only one published case in Utah
18 that I'm aware of in which a Utah case is
19 addressed, production of a witness' statement under
20 facts at all similar, and that was the Mower v.
21 McCarthy's case, and I believe, indeed, your Honor,
22 that the facts in that case were less compelling
23 than those in this case.

24 In Mower the representative of an estate
25 brought a claim arising out of a train accident.

1 Short time after the accident the railroad
2 investigated the accident and the investigation
3 included tape recorded interviews, or recorded
4 interviews with the crew members who survived the
5 train accident.

6 Plaintiff's initial counsel interviewed
7 the crew members one week after the railroad
8 interviewed the crew members. Some four years
9 later plaintiff's successor counsel interviewed the
10 surviving crew members.

11 Plaintiff then sought production of the
12 record, the statements taken, the recorded
13 statements taken by the railroad. The trial court
14 ordered production on appeal. The Utah Supreme
15 Court agreed that the statements should be
16 produced.

17 The Court said, "There would be some
18 reluctance on the part of loyal employees to tell
19 all they knew to plaintiff's investigators and
20 unless the investigators knew enough to ask the
21 right questions they would not be inclined to
22 volunteer evidence which would be damaging to
23 defendant's case."

24 "With their memories dimmed with time and
25 the toll which death had taken and the lack of

1 knowledge of many vital factors it would now be
2 futile to try to get to the bottom of the case
3 without refreshing the memory of the witnesses from
4 the transcript."

5 The Court further reasoned, "statements
6 should be produced to accomplish the well accepted,
7 well recognized purposes of discovery which is to
8 develop the truth and prevent surprise."

9 "The Court concluded plaintiff will be
10 greatly aided in these respects by such discovery
11 where she can never be adequately prepared for
12 trial without knowing what this transcript
13 contains."

14 Mr. Hardman's knowledge of the fence, his
15 observation of trespassers, incidents of prior
16 escapes and related knowledge go to the heart of
17 this lawsuit.

18 Defendant has sought to place blame for
19 the accident on someone other than himself and he
20 statistically alleged an unidentified trespasser.
21 At the same time he seeks to prevent plaintiff from
22 discovering information that goes to those very
23 issues.

24 Defendant has acknowledged a substantial
25 need that exists to produce the photographs. I

1 guess I'm a little bit at a loss to understand why
2 Mr. Hardman's statement to Mr. Harmon on the
3 morning of the accident, why Mr. Hardman's
4 observations the day of the accident aren't any
5 less substantial than the photographs, which we
6 can't tell what some of them depict anyway.

7 I believe the facts of this case weigh
8 quite heavily in light of the contemporaneous
9 nature of the observations that were made and
10 statements given. I think the facts weigh quite
11 heavily in favor of establishing the substantial
12 need for production.

13 Again, though, even if this court
14 considers to call a close one I think the balance
15 should be struck in favor of allowing discovery.
16 (Whereupon discussion concerning other matters
17 were held)

18 THE COURT: Remain there for a moment,
19 Counsel. In the inadequate showing or the
20 substantial need cases that you have referred to,
21 do they have other sources of information under
22 those circumstances, or is that the sole basis?

23 MR. JAMES: Often it's the sole basis, but
24 in every case it hasn't been, and in part, it
25 depends upon the specific facts of the case, and I

1 can't tell you any specific case name at this point
2 other than to say there are cases where there have
3 been other sources. But where the memories have
4 been dimmed, where essentially a part is precluded
5 from being able to obtain the equivalent of a
6 contemporaneous statement or someone that has a
7 fresh recollection the courts have ordered
8 production of the substantial need of the problem.

9 THE COURT: Any other cases that define
10 substantial equivalent?

11 MR. JAMES: Not that I can recall.

12 THE COURT: Nor do I.

13 Do you believe that where there's a sound
14 public policy that would dictate what the defendant
15 told an insurance adjuster or representative of an
16 insurance company on that particular morning, is in
17 fact, confidential?

18 MR. JAMES: I guess there are public policy
19 arguments that could be made both ways, but in
20 light of the liberal discovery rules and in light
21 of what trial and justice is all about getting at
22 the bottom of things, getting at the truth, I think
23 the balance weighs in favor of production.

24 THE COURT: Thank you.

25 Mr. Morgan, let me ask you a question

1 before you proceed. I've read your brief and
2 thoroughly I understand the arguments involved.
3 You have provided the plaintiff with a number of
4 photographs, I suspect, voluntarily. I don't know
5 that there was any court order in terms of any
6 motion to compel. What would be prejudicial to
7 have the Court order that a deposition could be
8 taken simply to identify what constitutes these
9 arrows on some of the photographs involved and some
10 inquiry regarding the photographs that have been
11 supplied and not broader than that but at least
12 that broad?

13 MR. MORGAN: I see no problem with that
14 just to educate the plaintiffs with regard to what
15 they reflect. I think Mr. Hardman's deposition
16 testimony, I think there are about six or seven
17 photographs and he authenticated about half of them
18 by saying this is what it represents and it's a
19 fair representation. On about three of them he
20 said "I don't know." And so in that regard, I
21 don't have a problem with that.

22 I jump forward to, now, how could that be
23 used at trial then. Let's say you identify what
24 three of those photos actually reflect, that
25 refreshes Mr. Hardman's recollection as to what

1 they reflect, and if he then was to say in my own
2 mind my recollection has been refreshed and I now
3 know what it is they represent could he so testify
4 at trial. Or do you bring in Mr. Harmon to testify
5 at trial and the danger then becomes the injection
6 of insurance in the litigation, which we would
7 strongly abhor and seek to avoid.

8 But in terms of what you have suggested in
9 that regard I see no problem if that's what the
10 deposition is limited to. They seek to have the
11 recorded statement when this court previously ruled
12 that the transcript of the recorded statement is
13 not admissible.

14 THE COURT: What has changed since that
15 date? Has there been any change that would show
16 some new evidence regarding some substantial need?

17 MR. JAMES: Yes. At the time this argument
18 was originally made I don't believe any deposition
19 had been taken in this case, and in fact, it
20 addresses substantially that Mr. Morgan made the
21 arguments, "Gees, they haven't even deposed
22 Mr. Harmon. How can they say there's a substantial
23 need when they haven't went out and talked to the
24 people who now have knowledge." We have now done
25 that.

1 THE COURT: I recall that. I overlooked
2 that.

3 MR. MORGAN: Mr. Hardman certainly
4 remembered a few items with regard to the
5 circumstances surrounding this particular matter.
6 290 pages of deposition testimony was taken of him
7 by the plaintiff. And so to say he doesn't
8 remember anything about the accident is perhaps
9 stretching it a little bit.

10 With regards to substantial need, which
11 you have just raised, I would point out that the
12 Mower case which was before Rule 26(b)3 which we
13 deal with here considered that and apparantly was
14 the only source. We don't have "the only source"
15 in this case. There's Mr. Hardman and there's also
16 the business record entry of the officer who was
17 there the morning following the accident.

18 I would say this with regards to Gold
19 Standard, for example, which was cited as
20 authority. There it dealt with they knew that
21 litigation had been threatened. It hadn't been
22 filed as yet, and they were after a letter that had
23 been written to counsel in which it set forth their
24 proposed fee agreement. And the Court in Gold
25 Standard, Justice Durham said, "Yeah, I think that

1 ought to be discoverable."

2 Now in Gold Standard it said under head
3 note 3, referring to this letter its primary
4 purpose was not to assist in pending or impending
5 litigation.

6 And then in the balance of the case it
7 again refers to that if it is to assist in pending
8 or impending litigation, this means that the
9 document must have either been created for use in
10 pending or impending litigation or intended to
11 generate ideas for the use of such litigation.

12 Well, certainly the recorded statement
13 that an insurance agent is taking would fit. I
14 think something that will assist in pending or
15 impending litigation, unlike the letter that
16 Justice Durham and the Court deemed was
17 discoverable in Gold Standard.

18 Now you raised that question with regards
19 to whether or not there was a confidentiality
20 between an insurance agent and the insured, and I
21 have a case that's directly on point there. It was
22 cited in the brief, Hendrick Heidabrink versus
23 Mauri Wakki, which is a 1985 Washington case.

24 The Supreme Court held that the statement
25 made by the insured to insurer following an

1 automobile accident was protected from discovery
2 under a rule which governs discovery of documents
3 and tangible things prepared in anticipation of
4 litigation. Passage of time alone did not
5 constitute substantial need justifying discovery of
6 statement, and substantial need for statement had
7 not been shown where primary reason for acquiring
8 statement was impeachment.

9 And needless to say, I think perhaps maybe
10 that's what plaintiffs hope to find here is that
11 there's something here that might impeach some
12 prior testimony.

13 The one part I wanted to read to you that
14 dealt with what you said was under headnote No. 5
15 on page 216.

16 It said, "An insured is contractually
17 obligated to cooperate with the insurance company.
18 Such an obligation clearly creates a reasonable
19 expectation that the contents of statements made by
20 the insured will not be revealed to the opposing
21 party."

22 "The insurer, on the other hand, has a
23 contractual obligation to act as the insured's
24 agent and secure an attorney. The insured cannot
25 choose the attorney, but can expect the agent to

1 transmit the statement to the attorney so
2 selected."

3 "Without an expectation of confidentiality
4 an insured may be hesitant to disclose everything
5 known. Such nondisclosure could hinder
6 representation by the selected attorney."

7 There must have been some reason for Rule
8 26(b)3. In this Court's prior ruling, and I have
9 to read this in light of, well, what's happened
10 since, as the Court has pointed out. But it says,
11 "The Court denies plaintiff's motion to compel and
12 for attorney's fees and that the request for
13 discovery is overbroad and involves material
14 protected under attorney work product doctrine
15 pursuant to Rule 26(b)3, Utah Rules of Civil
16 Procedure. The Court therefore limits discovery to
17 incidents occurring and documents created prior to
18 the accident in issue."

19 Incidents occurring. Now, that's talking
20 about something more than just documents.
21 Incidents occurring prior to the accident in
22 issue.

23 Then he goes on and says, "Documents
24 prepared subsequent to the accident were prepared
25 by the insurance company with the instruction of

1 defendant's attorney in anticipation of
2 litigation."

3 By the way, in that case there were a
4 couple of letters that I had sent to the insurance
5 company directing them to do that in all cases.
6 Maybe that's what the Court was referring to.

7 Then it says, "This ruling is made in
8 accordance with the decision in Fontaine v.
9 Sunflower Beef Carrier, a 1980 case in which the
10 U.S. District Court held that in the context of an
11 insurance investigation of an accident, quote, 'The
12 anticipation of the filing of a claim is undeniable
13 once an accident has occurred and a person injured
14 or property damaged.' This is especially true
15 today in this litigious society."

16 "Documents prepared at that time,
17 therefore, are clearly prepared in anticipation of
18 litigation and buyer for another party's
19 representative."

20 And then in the last paragraph, it says,

21 "In addition, plaintiff has failed to
22 demonstrate a substantial need for the documents in
23 accordance with Rule 26(b)3 which will overcome the
24 protection of the attorney work product doctrine.
25 Accordingly a protective order in favor of

1 defendant will be broadly phrased to encompass all
2 items placed in the file and all communication with
3 counsel subsequent to the date of the accident."

4 And again, therefore, it's kind of
5 "subsequent to the date of the accident," that was
6 the only communication really in issue at that time
7 because he was after the documents.

8 Now if the Court would have known that he
9 was also after the recorded statement, which is a
10 document, or the tape itself, which is a document,
11 certainly I believe the Court would have ruled that
12 that would have been encompassed in his broadly
13 phrased ruling.

14 We believe that Mr. Harmon ought not to be
15 deposed other than for the purposes that you have
16 indicated and within that limited scope and we
17 don't have a problem with deposition taking place
18 within that limited scope, and I think that any
19 ruling other than that would have to contemplate
20 how Mr. Harmon would be dealt with at trial if he
21 was going to be a witness at trial with respect to
22 the injection of insurance into the case which
23 would be unduly prejudicial and is irrelevant
24 according to Utah law.

25 THE COURT: Thank you, Counsel.

1 MR. JAMES: I believe, your Honor, if
2 you'll look back at the Mower case, and we
3 acknowledge in our brief that that was decided
4 prior to Rule 26(b)3, but I think the same analysis
5 applies, and if you look back at that and look at
6 what happened, that the statements that the
7 plaintiff was after in that case, that there was
8 not a single source of those statements as
9 Mr. Morgan has suggested.

10 What happened, your Honor, is the railroad
11 went out and interviewed four crew members. One
12 week later plaintiff's counsel went out and
13 interviewed those same crew members. Four years
14 later plaintiff had new counsel. It was at that
15 point plaintiff's new counsel went to the trial
16 court and said we want the statements that the
17 defendant, the railroad, obtained in investigating
18 this accident. The Court said, "Got to have the
19 statements. They were made contemporaneous. You
20 can't fairly prepare for trial without having
21 access to those statements."

22 With respect to the Gold Standard case
23 that is a case that I think I'm all too familiar
24 with, having worked on the losing end of that
25 thing, was a joint defense agreement that was at

1 issue in that case.

2 We have suggestions that perhaps it was a
3 letter not prepared in anticipation of litigation.
4 It was a joint defense agreement, your Honor.

5 With respect to the substantial need prong
6 and admittedly the Court previously ruled that the
7 recorded statement, that it was something that
8 constituted work product. I would like a lot to go
9 back and revisit that decision but that's not
10 appropriate. I think, though, your Honor, that in
11 the time that has expired since that time that a
12 substantial need clearly can be demonstrated.

13 That statement that Mr. Hardman gave to
14 his insurance representative was contemporaneous
15 with the accident at issue. It was given within
16 hours after the accident. It undoubtedly goes to
17 issues that are highly relevant in this case.

18 Mr. Hardman's observations of deer
19 enterals, why aren't any pictures taken of deer
20 enterals. I would like to know what he said
21 regarding this deer that was purportedly was
22 poached in the vicinity of the pasture, of the
23 tracks, of the fence.

24 All of these things are highly relevant to
25 our lawsuit and are statements made contemporaneous

1 with the occurrence of the lawsuit in this case.

2 Is there some sort of substantial
3 equivalent out there? Well, we can only look at
4 two other people other than Mr. Harmon for those
5 statements, and that's Mr. Hardman and Jerry
6 Monson.

7 Well, I think we can fairly set Jerry
8 Monson aside. He remembers virtually nothing. We
9 now have the recorded statement and we have Robert
10 Harmon. Robert Harmon made firsthand factual
11 observations regarding the pasture, regarding the
12 fence. He recorded Mr. Hardman's firsthand
13 observations as they stood there and looked and
14 observed the fence. Observed where the fence was
15 down. Observed, apparently, some enterals some
16 quarter of a mile away. Observed apparently some
17 tire tracks; all of those things relevant to the
18 issue of trespassing. Relevant to defendant's
19 claim that trespassers broke the fence down.

20 Again, your Honor, Utah law governs this
21 case. We have cited case law from lots of
22 jurisdictions and admittedly the case law's all
23 over the place. I can find a case on work product
24 to support anything.

25 The law is Utah. We have Mower that

1 guides us. Mower would suggest that Robert Harmon,
2 perhaps not addressed specifically, but the
3 recorded statement, Mower would suggest it ought to
4 be produced.

5 With respect to Mr. Morgan's
6 representations that he instructed Utah Farm Bureau
7 to take certain actions I think in fairness of full
8 disclosure to the Court, those instructions were
9 given to Utah Farm Bureau four, five or six years
10 before the accident at issue.

11 Mr. Morgan in this case did not call Utah
12 Farm Bureau and say, "With respect to this accident
13 you ought to do this."

14 The fact of the matter is, I met with
15 Mr. Robert Harmon before Counsel was ever involved
16 in this case, and before doing so I specifically
17 inquired of him whether that was okay. Whether
18 there was an attorney involved. No. Yes, it was
19 okay and, no, there's not an attorney involved.
20 Mr. Morgan came into play much later in this
21 lawsuit.

22 Again, your Honor, Utah law governs and I
23 haven't hit the waiver argument. I think there's
24 some very valid arguments that exist there and the
25 Utah Supreme Court addressed waiver in the Gold

1 Standard case, and I think waiver has occurred in
2 two instances. One, if what Mr. Hardman new or if
3 what he told Mr. Harmon constitutes work product
4 Counsel should have objected when I inquired into
5 that in the deposition. He didn't.

6 When we asked on interrogatories with
7 respect to statements that had been made regarding
8 the accident there was a reference made to the
9 recording. No objection.

10 I think the case law is pretty clear that
11 under those cases, even assuming this is all work
12 product and a substantial need doesn't exist, I
13 think it's pretty clear under the case law that
14 waiver has occurred.

15 But I don't even think the Court needs to
16 get to waiver. That's a rather painful issue to
17 address, I acknowledge. I think that a substantial
18 need exists here. These statements were made
19 contemporaneous with the accident at issue.

20 I can ask Mr. Robert Harmon what was
21 depicted in these photographs, but I ought to be
22 able to ask him what he saw. What did he see?
23 What did the fence look like? What did you see
24 with respect to these deer enterals. I think full
25 discovery and fairness would require that. I think

1 there's a substantial need for that, your Honor,
2 for that information. We would request the Court
3 allow us to depose Mr. Harmon.

4 With respect to injecting the iss of
5 insurance at trial obviously that can be ealt with
6 at the time.

7 THE COURT: How?

8 MR. JAMES: At that point in time, I guess
9 we can tell the Court what Mr. Harmon has to tell
10 us and the Court can say whether we can ask him or
11 not. Whether we can call him or whether we can use
12 that information in any way at trial or not.

13 I think the fact, though, that he's
14 somehow connected with an insurance company, to
15 suggest that because of that we shouldn't be able
16 to depose him I think is not only unfair, but
17 contrary to Rule 26 where it says irrespective of
18 whether its admissible at trial, it's relevant,
19 which in this case it clearly is. You ought to be
20 able to discover it.

21 I think in this case, your Honor, again,
22 it is relevant and I think there's no question
23 about that and we would ask the Cou. to let us
24 discover it. Thanks judge.

25 THE COURT: I believe that .ddresses all

1 of the pending motions, I hope. The others are sub
2 motions. Let's see which ones we can go to.

3 Let's take these in some order.

4 (Whereupon other issues were ruled on)

5 Plaintiff's motion to compel, I believe
6 frankly, that there is some expectation of
7 confidentiality. I believe there's a public policy
8 argument that's a persuasive one. I also believe
9 that while it may not have been anticipated by
10 Judge Ballif of a broad protective order that would
11 go to the issue of the tape or transcript of the
12 tape, certainly it appears that since that time
13 there has been no additional -- well, I'll state it
14 as an inadequate showing of substantial need.

15 There is a work product involved that
16 ought to be protected. Courts are granted broad
17 discretion on these issues, weighing the facts
18 involved and sort of a civil counterpart of a
19 totality of the circumstances involved, and
20 granted broad discretion under Rule 26(b)3 of the
21 Utah Rules of Civil Procedure to weigh those facts
22 and make a determination.

23 There must be a showing of substantial
24 need and that the plaintiff is unable to obtain a
25 substantial equivalent of the evidence contained

1 within that particular recording.

2 This court is aware of the standard
3 announced both in Mower and also the Gold Standard
4 cases, and believes that there is a substantial
5 equivalent. One, in the written record of deputy
6 Jerry Monson, albeit somewhat abbreviated, and
7 while he has no independent recollection of this
8 date of some of the facts involved, there is a
9 written record.

10 Secondly, there has been a long
11 deposition of the defendant involved that's been
12 demonstrated somewhat in excess of 200 pages. The
13 inquiry regarding, quote un, quote, "contemporary
14 statements" made the following morning to a
15 representative of the insurance adjuster are fairly
16 detailed in the estimation of this court.

17 Despite that ruling, defendants have
18 supplied plaintiffs with seven photographs that
19 were taken on that particular morning.

20 The Court will grant plaintiff's motion to
21 compel a deposition of Mr. Robert Harmon on the
22 narrow issue of the photographs, not only the
23 contested ones but all of the photographs involved
24 and they were supplied -- they were taken evidently
25 by him on that morning and that is a legitimate

1 inquiry regardless of the balance of the order.

2 (Conclusion of argument and ruling)

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1 STATE OF UTAH)
2) ss.

3 COUNTY OF UTAH)
4
5


6 I, Beverly Lowe, Certified Shorthand
7 Reporter and Notary Public for the State of Utah,
8 certify:

9 That I am an official court reporter in
10 the Fourth Judicial District Court of the State of
11 Utah.

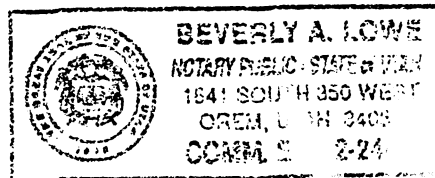
12 That I was present during the entire
13 proceedings in the before entitled cause; that the
14 proceedings were reported stenographically by me,
15 and were thereafter transcribed.

16 That said transcript constitutes to the
17 best of my ability, a true and complete record of
18 the proceedings had.

19 IN WITNESS THEREOF, I have subscribed my
20 name and affixed my seal this 16th day of July
21 of 1993.

22 
23 Beverly Lowe, CSR/RPR
24 NOTARY PUBLIC IN AND FOR THE
25 COUNTY OF UTAH, STATE OF UTAH

My commission expires: 2/24/96



Tab J

Copy

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH

JULIA LEE ASKEW,

Plaintiff,

vs.

PAUL HARDMAN,

Defendant.)

) Case No. 91-0400665

) (Testimony of Doug

) Smith)

January 13, 1993

BEFORE: THE HONORABLE LYNN DAVIS
FOURTH DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff:

Mark F. James
Gary A. Dodge
KIMBALL, PARR, WADDOUPS,
BROWN & GEE
185 South State Street
Suite 1300
Salt Lake City, Utah 84147
Telephone: (801)532-7840

For the Defendant:

Stephen G. Morgan
Mitchel T. Rice
MORGAN & HANSEN
Kearns Bldg., 8th Floor
136 South Main Street
Salt Lake City, Utah 84101
Telephone: (801)531-7888

Reported by: Beverly Lowe RPR/CSR

Center Court Reporting
40 South 100 West
Suite 203
Provo, Utah 84601
Telephone: (801)373-4646

1 A. I built a two wire fence, and it was
2 adequate to hold horses. I never had one go
3 through it.

4 Q. When you say "two wire," is that a two
5 strand barbed wire?

6 A. Two strand barbed wire, yes, sir.

7 Q. What kind of posts?

8 A. Steel posts, T-posts.

9 Q. Have you ever repaired a fence for Paul
10 Hardman?

11 A. Yes, I did.

12 Q. What was the nature of your relationship
13 with Paul Hardman?

14 A. We live out in the same area. We're about
15 a mile and quarter apart. We're friends and
16 neighbors. We go to the same church but we don't
17 socialize much together.

18 Q. Were you asked to do some repairs to Paul
19 Hardman's fence in 1989?

20 A. Yes, sir, I was.

21 Q. And do you recall an accident that
22 occurred on November 20, 1989?

23 A. Yes, I do.

24 Q. How long before that accident would it
25 have been that you would have made the repairs to

1 Mr. Hardman's fence?

2 A. Well, I don't know exactly. I don't
3 remember the date exactly, but it was in latter
4 part of October or early November. Sometime in the
5 area of deer season or shortly after.

6 Q. Would it have been before, during or after
7 deer season?

8 A. Could have been the latter part. I don't
9 know exactly.

10 Q. Is your best recollection, then, the
11 latter part of October or the first part of
12 November?

13 A. Yes, sir, that is correct.

14 Q. And tell me what you did.

15 A. Paul told me what he wanted on the fence.
16 So I went that one day, myself, and anywhere that
17 the wire was rotten or needed replacing, I put new
18 wire on it. If I thought the post was bad I would
19 replace it. If I thought there was too much
20 distance I would put a new post in. I spent two
21 days on it fixing the fence.

22 Q. How much time did you spend each day?

23 A. Six or seven hours, approximately. I
24 don't know just exactly.

25 Q. Did you go around the entire fence on

1 Mr. Hardman's property on the winter pasture?

2 A. Yes, I did.

3 Q. Are you familiar with this term "winter
4 pasture"?

5 A. Yes, sir, I am.

6 Q. Do you know where the north fence line of
7 that winter pasture is?

8 A. Yes, sir.

9 Q. Did you make any repairs to that area of
10 the fence?

11 A. We did. There was one area there somebody
12 knocked some posts over and we stood them back up
13 so that it was good.

14 Q. Did you do whatever you felt you needed to
15 do to make it an adequate fence to contain horses?

16 A. I did.

17 Q. And in your opinion was it?

18 A. Yes, sir, it was. It was adequate before
19 I repaired it. I don't think they could have ever
20 got out.

21 Q. You mentioned the distances between
22 posts. If the distance -- well, what is an
23 adequate distance between posts?

24 A. I would say anywhere between 20 and 30
25 feet with the steel posts.

1 Q. What do the posts do with relationship to
2 the wire?

3 A. Well, the steel posts will bend just a
4 little bit, but not too much. It will hold it
5 pretty tight.

6 Q. If there was 40 feet between the posts,
7 would that make the fence inadequate?

8 A. No, sir, I don't think it would.

9 Q. Why is that?

10 A. As long as there is no big sag in it.

11 Q. What experience have you had with regard
12 to barbed wire fences and any sagging?

13 A. Very little sag in them.

14 Q. What does the wire do in the wintertime
15 and the summertime because of the weather?

16 A. Well, in wintertime when it's cold it
17 should contract and tighten up, and when it's warm
18 it should expand and loosen up.

19 Q. When you finished repairing Mr. Hardman's
20 fence at the north end of the pasture was there any
21 sag in the two strands of barbed wire?

22 A. No, sir, there wasn't. We had them
23 stretched pretty tight.

24 Q. When you finished doing your work, what do
25 you recall in terms of the height of the lower wire

1 and the height of the upper wire along the north
2 side of the pasture?

3 A. I would say that somewhere the lower wire
4 is 18 inches to two feet, somewhere in that
5 vicinity. The upper wire would have been three and
6 a half to four feet.

7 Q. Now, you mentioned someone else helped you
8 make the repairs. Who was that?

9 A. It was Darrell Allred, a neighbor.

10 Q. How much time did he spend? You say you
11 spent --

12 A. I spent one day and he come the second day
13 with me. He come along as I was going up and said,
14 "Where are you going?" I says, "Going up and work
15 on Paul's fence." He says, "Well, I haven't got
16 anything to do. I'll go with you."

17 Q. How much time did he spend with you that
18 second day?

19 A. He spent six or seven hours. I don't know
20 exactly.

21 Q. Did you get paid for the work that you
22 did?

23 A. Yes, sir. Paul paid me in hay. He gave
24 me two tons of hay.

25 Q. I don't know what two tons of hay is

1 did that?" Answer, "Probably when I was living in
2 Alpine. Probably 15, 20 years ago."

3 A. Yes.

4 Q. Did I correctly read your answer,
5 Mr. Smith?

6 A. That's the way the answer reads, yes.

7 Q. And if I could again draw your attention
8 to the last question on page 13, and "Could you
9 describe that fence for me?" Your answer on the
10 top of page 14, "Well, it was a three barbed
11 wire fence with cedar posts." Did I read that
12 accurately, Mr. Smith?

13 A. Yes, you did.

14 Q. Again, Mr. Smith, how many wires were on
15 the north side of Mr. Hardman's pasture?

16 A. There were two.

17 Q. Do you recall whether the horses were in
18 the pasture when you fixed the fence in the fall of
19 1989?

20 A. I'm sure they weren't.

21 Q. That they were not?

22 A. Were not.

23 Q. Do you know where the horses left the
24 pasture on the evening of November 20, 1989, the
25 night of the accident?

Q. Do you know what kind of fence you need to build in order to keep trespassers out?

A. There is no kind of fence you can build to keep trespassers out.

Q. Is a two strand barbed wire fence standard or normal in Utah County to contain horses?

A. Yes, it is. There's a lot of one wire also.

MR. MORGAN: Thank you. That's all.

THE COURT: You may step down. Thank you, sir.

(Testimony concluded)

Tab K

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH

JULIA LEE ASKEW,
Plaintiff,
vs.
PAUL HARDMAN,
Defendant.)
)
)
)
)
) Case No. 91-0400665
) (Rebuttal Testimony
) of Paul Hardman)
)
)
)

January 13, 1993

BEFORE: THE HONORABLE LYNN DAVIS
FOURTH DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff: Mark F. James
Gary A. Dodge
KIMBALL, PARR, WADDOUPS,
BROWN & GEE
185 South State Street
Suite 1300
Salt Lake City, Utah 84147
Telephone: (801)532-7840

For the Defendant: Stephen G. Morgan
Mitchel T. Rice
MORGAN & HANSEN
Kearns Bldg., 8th Floor
136 South Main Street
Salt Lake City, Utah 84101
Telephone: (801)531-7888

Reported by: Beverly Lowe RPR/CSR

Center Court Reporting
40 South 100 West
Suite 203
Provo, Utah 84601
Telephone: (801)373-4646

1 Q. I'm showing you specifically page 83. You
2 talked about two seasons when people come in and
3 the spring fisherman will push the gates over, in
4 the fall with morning doves and pheasant hunters
5 and then deer seasons. You've have had problems
6 with hunters coming over there, is that right?

7 A. Yes, that was prior to when we put the
8 locked gates up, which was approximately seven or
9 eight years prior to the accident.

10 Q. And yet down at the bottom, page 83 on
11 line 22 you say, "So I come home and the horses,
12 you know, this has happened." "This" meaning the
13 accident. "My normal reaction is that the damn
14 hunters had left the fence down. That's a normal
15 reaction because of the past experience I have had
16 with trespassing." Right?

17 A. May I explain that?

18 Q. Yes. First of all, did I read that
19 accurately?

20 A. Yes, you did read that accurately.

21 We have all been told of instances when
22 people just before they get in an accident their
23 life reflects before their eyes. And I can verify
24 that, being a pilot and having some experience.

25 When I came home that night I was very

1 angry when I saw the accident because in the back
2 of my mind I knew that my horses were in a secure
3 fence, and that I assume because of the same type
4 of an incidents, all the incidences from years
5 beyond flew through my mind, and I assumed that
6 knowing that my fences were secure, knowing that I
7 had prior problems, mere fact that trespassers or
8 hunters had left the fence down and I did make that
9 statement.

10 Q. Mr. Hardman, if you'll turn to page 84 and
11 I'll read the top of that page the question. "Tell
12 me approximately how many instances of trespassing
13 or other problems you experienced in the spring
14 with respect to the winter pasture in the five
15 years prior to November of 1989."

16 Your answer was, "Gees, I don't know.
17 Instances where the fences have been pushed over or
18 the gates let down, possibly maybe five, six times
19 a summer during the summer."

20 You testified there that you had five or
21 six instances a year in the five years prior to
22 this accident; is that right?

23 A. That's what I said.

24 Q. And then it goes on, "How about in the
25 fall, the same time period?" Meaning the five

1 there?

2 Bottom of page 195, line 22 the question
3 is, if I could refer you to the last sentence of
4 that section, we're referring now to Deputy
5 Monson's report, where it says the RP, which meant
6 reporting party, said, "He has put that section of
7 fence up three times since the deer hunt but the
8 hunters keep knocking it down." Did you say that?

9 A. Yes.

10 Q. Your answer on top of 196 was yes.
11 Question, "Do you recall having made that statement
12 to the officer?" And your answer was?

13 A. "Yes."

14 Q. "Was that an accurate statement?" And your
15 answer was, "Could have been two times rather than
16 three." Is that right?

17 A. Yes.

18 Q. And then the question, "Do you recall
19 having put the fence up at least two times?" Your
20 answer?

21 A. "Yes."

22 Q. "And perhaps three?" And your answer?

23 A. "Yes."

24 Q. And then the question, "Would that be
25 prior to the occasion of November 20, 1989 when the

1 fence was knocked down?" And your answer was?

2 A. "Yes."

3 Q. "Yes, yes." Right? You can't deny today,
4 can you, Mr. Hardman, that your horses escaped more
5 than one time in the several weeks prior to
6 accident?

7 A. Several weeks prior to the accident they
8 escaped one time. The fence was down but the
9 horses had escaped once.

10 Q. If you'll turn, Mr. Hardman, to page 199
11 of your deposition beginning at line 14, the
12 question was, "Now with respect to any of the two
13 or three times that you have described --" and I'll
14 pause here and have you verify if necessary, by
15 looking back at the two or three incidents that you
16 described relate to the two or three times since
17 the deer hunt that you told Deputy Monson that the
18 fence had been knocked down and put back up; is
19 that accurate?

20 A. Okay.

21 Q. Now with respect to any of the two or
22 three times that you described, did horses escape
23 on any of those occasions and your answer was yes.
24 "How many of those occasions did horses escape?"
25 Your answer?

1 A. "Maybe all two or three. I'm not sure."

2 Q. Then the question, "So on the, I take it,
3 two or three occasions we talked about, those
4 occasions occurred while the horses were in
5 the pasture?" And your answer?

6 A. My answer was yes, but that's incorrect.

7 Q. Then the question was, "After you moved
8 the horses into the winter pasture?" And your
9 answer was?

10 A. "Yes."

11 Q. The question was, "Do you recall on any of
12 those two or three occasions when the horses
13 escaped where they went?" Then you went back -- let
14 me back up. "The first time it was torn down and
15 possibly the second, the horses may not have been
16 put in there. It was real close to the time when I
17 put the horses and I can't remember if they were in
18 there for certain or not. I know one of the times
19 they had escaped from when the fence had all been
20 torn down, but I don't recall that they had all
21 three, if that's what it was, all three times."

22 Question, "Is your recollection such that
23 you can deny that they escaped other than on the
24 one occasion?"

25 Your answer, "No, not all of them had

1 escaped at one time. Some were out. The time I
2 can remember there were three or four that were out
3 and the rest were still in the pasture and they
4 stayed right there in the pasture. They didn't go
5 anywhere." Did I read that accurately?

6 A. That's right and I think that clarifies
7 the question previous, that the time that they had
8 escaped, I said there, and refers to the one time,
9 and it also refers on one of those other questions
10 that I couldn't recall exactly how many times. And
11 again, Counselor, this is three years after the
12 fact and it's difficult to remember specific times
13 and days.

14 Q. The report you gave to Mr. Monson is that
15 the fence had been torn down by hunters two or
16 three times since the deer hunt, was what, the day
17 after the accident?

18 A. Day after the accident.

19 Q. Is your memory better three years later or
20 the day of after the accident?

21 A. Probably the day after the accident.

22 Q. Your memory was better that day than it is
23 today too, wasn't it?

24 A. Probably. I was pretty upset that day
25 also.

1 Q. You had never previously had two or three
2 incidents of trespassing in that short of time at
3 that place in the north pasture; isn't that true?

4 A. That's true.

5 Q. The two or three incidents immediately
6 prior to the accident, you didn't report any of
7 those to the sheriff's office did you?

8 A. Reported them to the guard service but did
9 not call the police.

10 You have got to remember, Counselor, the
11 first time was the time that my son saw the fence
12 down. That fence could have been down for a long
13 period of time. If the horses hadn't been in there
14 there was no reason to go over and check the
15 fence. It was in the fall. The horses had been
16 out eight months or better. The fences had not
17 been repaired for that year. That's why every year
18 you make annual checks of your fences and repair
19 them before you put the animals in there.

20 Q. Mr. Hardman, neither Mr. Smith nor
21 Mr. Allred fixed the fence on these two or three
22 occasions immediately prior to the accident. You
23 fixed them; isn't that right?

24 A. They fixed them -- I believe -- could've
25 fix them the first time. The one that my son saw

1 Q. Now, the next two lines were not read at
2 the time that the others were read. The question
3 at line 14, "Had you observed that happen in 1989?"

4 A. "Not prior to the accident, no."

5 Q. In Plaintiff's Exhibit No. 15, which is
6 Jerry Monson's report, it says, "The RP --" or
7 reporting party -- "said he has put that section of
8 fence up three times since the deer hunt, but
9 hunters keep knocking it down."

10 Now, with regard to putting the fence up,
11 did horses get out of the pasture on any one of
12 those occasions when you put the fence back up
13 other than the one time two weeks before the
14 accident and the date of the accident?

15 A. The horses had only been out the one time.

16 Q. So when the fence had been put back up
17 three times since the deer hunt, did Doug Smith
18 repair your fence about four weeks before, three or
19 four weeks before the accident?

20 A. Yes, he did.

21 Q. Were there horses in the pasture at that
22 time?

23 A. No, there wasn't.

24 Q. And since they repaired the fence three or
25 four weeks prior to the accident was there any

1 occasion other than two weeks before when the fence
2 was torn down and the horses got out?

3 A. Not other than the accident.

4 Q. And then when your son or whoever it was
5 that, made you aware there had been some tampering
6 about a month prior to the accident, were there
7 horses in the pasture at that time?

8 A. No, they weren't.

9 Q. Now, you mentioned some access and some
10 gates and you said that they had combinations locks
11 on them.

12 A. Yes.

13 Q. Who has the combination?

14 A. The National Guard, full-time National
15 Guard personnel, the water master that goes along
16 the canal, and myself and my neighboring farmer who
17 accesses that road to get in the farm.

18 Q. You mentioned there was a gate down near
19 the lower portion of Defendant's Exhibit 6 that may
20 be open at times.

21 A. Yes.

22 Q. With regard to that gate who were the
23 Holbrooks and do they use that gate?

24 A. The Holbrooks are my farming neighbors
25 here. They own a great share or large amount of

Tab L

1 IN THE FOURTH JUDICIAL DISTRICT COURT

2 UTAH COUNTY, STATE OF UTAH

3 * * *

4 _____
5 JULIA LEE ASKEW,)
6 Plaintiff,) No. 910400665
7 -vs-) Testimony of:
8 PAUL HARDMAN,) Jerry Monson
9 Defendant.)
10 _____
11

12 January 5, 1993

13 Utah County Judicial Center

14 Provo, Utah

15
16 BEFORE: THE HONORABLE LYNN W. DAVIS, JUDGE

17
18 For the Plaintiff: GARY A. DODGE, ESQ. &
19 MARK F. JAMES, ESQ.
20 Attorneys At Law
 185 South State #1300
 Salt Lake City, Utah 84111
21 For the Defendant: STEPHEN G. MORGAN, ESQ. &
22 MITCHEL T. RICE, ESQ.
 Attorneys At Law
 136 South Main #800
23 Salt Lake City, Utah 84101
24
25

1 A Yes.

2 Q And could you tell the jury what it is?

3 A This is a report I took the day after
4 the accident that Mr.-- on Mr. Hardman's
5 property.

6 Q And you prepared the report?

7 A Yes.

8 Q Did you prepare it in the ordinary
9 course of your duties as a law enforcement
10 official?

11 A Yes.

12 MR. JAMES: Your Honor, we'd move for
13 the introduction of Plaintiff's Exhibit 15.

14 MR. MORGAN: No objection.

15 THE COURT: It may be received.

16 (Whereupon, Plaintiff's Exhibit No. 15 was
17 received into evidence.)

18 Q (BY MR. JAMES) Mr. Monson, did you go
19 to Mr. Paul Hardman's pasture on November 21,
20 1989?

21 A Yes.

22 Q Why did you go there?

23 A He called in with a report of vandalism
24 to his fence. I was there to investigate it.

25 Q And is the report that you have in

1 closely how-- exactly how old they would be.

2 MR. JAMES: No further questions, Your
3 Honor.

4 THE COURT: You may cross examine,
5 counselor.

6 CROSS EXAMINATION

7 BY MR. MORGAN:

8 Q Mr. Monson, are you a deerhunter?

9 A Yes.

10 Q And what do you do after you shoot a
11 deer?

12 A You clean it out.

13 Q What does that mean?

14 A You cut it open and you take all the
15 insides out.

16 Q And are the insides referred to as
17 " entrails"?

18 A We always called them " guts". But I
19 thought entrails would be a good word today.

20 Q Why do you do that?

21 A So the deer doesn't spoil, meat doesn't
22 spoil.

23 Q So what's typically done as far as
24 you're concerned with the guts; just leave them
25 there?

1 A They're left there on the ground.

2 Q Do you have any knowledge whether it's
3 typical for birds such as magpies or whatever to
4 come along and get whatever's left?

5 A I think it's typical.

6 Q The entrails or the guts that you saw
7 the morning of November 21, 1989 near where the
8 fence was down, had they already been eaten by
9 other animals or were they still there for you
10 to observe?

11 A They were still there. I don't know
12 whether any animals had been eating on them or
13 not.

14 Q Is that what lead you to conclude that
15 a deer had recently been poached in the area and
16 the entrails were still left there for you to
17 observe?

18 A Yes.

19 (Whereupon, Defendant's Exhibit Nos. 16 &
20 17 were marked for identification.)

21 MR. MORGAN: Your Honor, I think we've
22 stipulated we can substitute a cleaner copy, one
23 that's easier to read.

24 MR. JAMES: That's fine, Your Honor.

25 THE COURT: If you'd just change the

1 MR. JAMES: I'm going to object, Your
2 Honor. I believe that's hearsay.

3 MR. MORGAN: Hearsay conversation
4 between these two individuals. We'll submit it.

5 THE COURT: Well, it is hearsay. Is
6 there an exception?

7 MR. MORGAN: Yeah. I think that on
8 examination they asked him what Mr. Hardman had
9 said. They opened it up. I'm just asking a
10 further part of that conversation. They have
11 asked what was said.

12 MR. JAMES: Your Honor, I don't
13 believe that is basis for some sort of an
14 exception to the hearsay rule that I'm aware of.

15 MR. MORGAN: Well, you can't have part
16 of the conversation without other parts of the
17 conversation if they open the door to that
18 conversation.

19 THE COURT: If it's the same
20 conversation, I'll allow it, counsel, to be
21 explored on cross-examination.

22 Q (BY MR. MORGAN) Do you recall him
23 telling you that, "It's not my fault"?

24 A Yes.

25 MR. MORGAN: That's all.

Tab M

1 IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
2 UTAH COUNTY, STATE OF UTAH

3 JULIA LEE ASKEW,)
4 Plaintiff,) No. 910400665
5 -vs-) Motion to Quash
6 PAUL HARDMAN,)
7 Defendant.)

8
9
10
11 January 4, 1993
12 Utah County Judicial Center
13 Provo, Utah

14
15 BEFORE: THE HONORABLE LYNN W, DAVIS, JUDGE

16 APPEARANCES:

17 For the Plaintiff: GARY A. DODGE, ESQ. &
18 MARK F. JAMES, ESQ.
19 Attorneys At Law
185 South State #1300
Salt Lake City, Utah 84111

20 For the Defendant: STEPHEN G. MORGAN, ESQ. &
21 MITCHEL T. RICE, ESQ.
22 Attorneys At Law
136 South Main #800
Salt Lake City, Utah 84101

23
24
25

1 Monday, January 4, 1993

2 PROCEEDINGS

3 (Whereupon, the following proceedings
4 occurred in chambers:)

5
6 THE COURT: Let's call the case, then,
7 of Julia Askew V Paul Hardman.

8 A record ought to reflect now being a time
9 set for trial in this case. We indicated at the
10 last meeting to resolve some of a outstanding
11 issues of the Court that we would meet a few
12 moments before trial, after the morning
13 calendar, and address any preliminary matters.
14 Mr. Morgan is here, and Mr. Rice, in behalf of
15 the defendant.

16 Now, are we going to have-- I still have
17 listed Gary Dodge, Mark James and Scott Young,
18 three for a plaintiff.

19 MR. DODGE: Scott will not be involved
20 in a trial.

21 THE COURT: Okay. So G. y Dodge and
22 Mark James are present. And what matters need to
23 be addressed at this stage, counsel?

24 MR. MORGAN: Your Honor, we have filed
25 a Motion to Quash a Subpoena that was served on

1 Robert Harmon to appear at trial. And I think
2 the Court needs to rule on this prior to opening
3 statement, specially if a plaintiff plans to
4 identify him as a potential witness, and then
5 opening statement to say what they believe he's
6 going to testify to at trial.

7 We faxed to the Court this morning, and to
8 counsel shortly after 8:00, this motion. We also
9 served them with a copy this morning. And Gary
10 indicated he hadn't had a chance to read it.
11 Maybe a Court's in a same position.

12 But it's based primarily on a fact that we
13 believe, by calling Robert Harmon, it is simply
14 an attempt to inject insurance into a trial.

15 Rule 403 of a Rules of Evidence provides,
16 quote:

17 "Although relevant, evidence may be
18 excluded if its probative value is
19 substantially outweighed by the danger
20 of unfair prejudice, confusion of a
21 issues or misleading the jury, or by
22 considerations of undue delay, waste of
23 time or needless presentation of
24 cumulative evidence."

25 This is a discretionary matter with the

1 Court which, absent an abuse, is typically
2 upheld by the Utah Supreme Court.

3 The Court, in Zions-- Terry V Zions, a 1979
4 case, stated, quote:

5 " Evidence is unfairly prejudicial in
6 this context if it has a tendency to
7 influence a outcome of a trial by
8 improper means or if it appeals to jury
9 sympathies or arouses its sense of
10 horror, provokes its instinct to punish
11 or otherwise causes a jury to base its
12 decision on something other than a
13 established propositions of a case."

14 Now, in Rule 411 of a Utah Rules of
15 Evidence, the Court has determined that
16 insurance is irrelevant. And there's
17 substantial case law that says if it's injected
18 into a trial, it is prejudicial to the
19 defendant.

20 A Utah Supreme Court, in Ries V Gentile, a
21 1991 case, 813 P 2d 111, at page 12 , stated,
22 quote:

23 " Because of a concern that knowledge
24 of liability insurance will increase a
25 frequency of favorable plaintiff

1 verdicts and elevate damage awards, Utah
2 Rule of Evidence 411 was adopted", end
3 quote.

4 So we believe a Utah Supreme Court has
5 already ruled that in adopting this rule of
6 evidence that a interjection of insurance in a
7 trial would unfairly prejudice a defendant.

8 Now, if he is referred to-- Mr. Harmon--
9 When we took his deposition, he was asked,
10 "Well, who do you work for?" I objected. If he
11 is even referred to as an investigator, he's
12 either an investigator for a police or for an
13 insurance company. And once they determine that
14 he's not with a police department, the obvious
15 implication is is that he works for an insurance
16 company.

17 A Utah Court of Appeals held that, quote:

18 " A balancing test of Rule 403 thus
19 excludes matters of scant or cumulative
20 probative force dragged in by the a
21 heels for a sake of its prejudicial
22 effect."

23 We also believe that his testimony would be
24 cumulative with regard to his observations and a
25 pictures, a photographs. Paul Hardman can

1 identify that they fairly represent a fences
2 that existed a morning following a accident.

3 This case will be tried supposedly in one
4 week. With a cumulative witness such as Mr.
5 Hardman, we believe that it would not only be
6 cumulative but waste a Court's time.

7 Now, initially this Court ruled that a
8 files and records of Mr. Harmon were not subject
9 to discovery; then subsequently, at our last
10 hearing, the Court ruled that Mr. Harmon's
11 deposition could be taken.

12 The Court made its ruling on December 28th,
13 but it was limited to what a photographs showed
14 and what his personal observations were. A
15 deposition was then taken on December 30th,
16 limited in that regard.

17 We feel that to subpoena Mr. Harmon now and
18 bring him in as a witness at a trial has the
19 danger of injecting insurance into a trial, and
20 that is why we have filed a Motion to Quash a
21 Subpoena of Robert Harmon and supported that
22 motion with our memorandum.

23 THE COURT: Counsel?

24 MR. DODGE: Your Honor, maybe I should
25 first inquire of the Court, there is this, there

1 are several other matters that ought to be heard
2 outside the jury room on-- essentially similar
3 issues about unduly prejudicial and
4 non-probative or evidence where a prejudice will
5 outweigh a probative value that we'd like to
6 raise with you.

7 I had not intended to do that right now
8 while the jury is waiting unless you want. I
9 will respond to this one and/or raise our own if
10 you want to go through them all right now.

11 THE COURT: Well, I don't think we'll
12 keep the jury waiting. Do all of these relate
13 to anything that would be involved either in
14 opening statement or identification of
15 witnesses?

16 MR. DODGE: Potentially in opening
17 statement.

18 THE COURT: We'll reserve that for
19 this afternoon.

20 But this would-- might involve--

21 MR. MORGAN: Identifying witnesses--

22 THE COURT: -- the identification of
23 witnesses. A identification of witnesses
24 initially; is that correct?

25 MR. DODGE: Well, it could. It could.

1 Let me respond.

2 THE COURT: Why don't you respond to
3 this Motion to Quash a Subpoena.

4 MR. DODGE: I have not read Mr.
5 Morgan's memo. But my response is essentially
6 two-fold.

7 Your Honor, with your permission, we took a
8 deposition of Mr. Harmon. Part of a reason we
9 requested that permission is that some of a
10 photographs hadn't been and couldn't at the time
11 be identified by Mr. Hardman, a defendant. And
12 secondly, we felt like some of a pictures were
13 inconsistent with Mr. Hardman's testimony of a
14 events and a scene that morning.

15 In a deposition we believe some of that was
16 confirmed. There are some inconsistencies, not
17 only in pictures but in some of his
18 observations.

19 We believe that Mr. Harmon properly can and
20 should be called without identifying him as an
21 insurance adjustor, to identify what is in the
22 pictures, what he saw, what he remembers from a
23 scene.

24 I understand Mr. Morgan's fear of insurance
25 being injected into a trial. It's a matter

1 that's long been part of, I guess, a tradition
2 of a insurance defense bar and even of the
3 courts to try and prevent that.

4 I submit, Your Honor, that a current
5 feeling is that even that is overstated. That
6 fear is overstated.

7 I'd refer Your Honor to Evans V Dottie,
8 which is a 1991 Court of Appeals case, in which
9 they add this footnote-- I won't read it all,
10 but I'll read part of it.

11 " A traditional logic is that a jury
12 may be more likely to find from
13 plaintiff or increase the plaintiff's
14 damage award if the jury knows that
15 defendant has insurance. A per se
16 liability insurance rule developed
17 during a time when liability insurance
18 was uncommon. More recently, however,
19 courts have begun to question this
20 traditional insurance rule."

21 And they cite a Third Circuit Court of
22 Appeals case that says:

23 " The word insurance is not outlawed
24 from the courtrooms-- In fact, it is
25 more realistic for the judge to dissolve

1 a phantom by open talk in a courtroom
2 than to have it run loose in the
3 unconfined speculations of the jury
4 room."

5 A Utah Court of Appeals goes on to say:

6 " There can be little question that even
7 unsophisticated jurors will suspect the
8 existance of insurance. The general
9 prevalence of liability insurance for
10 automobile injuries is known to the
11 jurors; hence, for the law to forbid any
12 disclosure of it in a course of a trial
13 seems to be merely a piece of
14 hypocritical futility."

15 THE COURT: Counsel, isn't that-- but
16 that goes directly to automobile insurance.

17 MR. DODGE: Well, that's true. The
18 existance of liability insurance for people is
19 as prevasively known as any.

20 But the reason I bring it is not because I
21 want to say the word " insurance" at the e,
22 Your Honor. I'm not going to try at '--

23 THE COURT: Didn't we plow his ground
24 already last week when you were both before the
25 Court and I inquired as to your motives to--

1 MR. DODGE: Yes.

2 THE COURT: -- depose Mr. Harmon?

3 And I thought we addressed then that he's
4 not going to be a witness; you didn't intend to
5 call him as a witness. This Court would not
6 permit him to be a witness, but you wanted some
7 clarification of the photos on that occasion and
8 you wanted some of his personal observations.
9 That was actually one step broader than defense
10 counsel wanted this Court to allow you to
11 inquire.

12 MR. DODGE: Your Honor, if I could
13 respond to that.

14 THE COURT: But can't you just simply
15 cross-examine the defendant respecting whatever
16 knowledge you may now have?

17 Two points of view. This occurred in
18 November of 1989. You deposed him in December
19 of 1992. Some three years have run. There's
20 going to be naturally some different
21 observations respecting that occasion, I
22 suspect.

23 MR. DODGE: Your Honor, if I may
24 respectfully respond to your memory of the
25 28th.

1 I don't believe there was a determination
2 made at that time whether we could or could not
3 call him. Indeed, Your Honor asked me about
4 that specifically. And I said, " I trust our
5 collective wisdom and talents to be such that we
6 would be able, if necessary, to call Mr. Harmon
7 without injecting insurance, by not referring to
8 his employer."

9 THE COURT: You may have finessed that
10 answer, that's correct.

11 MR. DODGE: And what I had understood
12 was that we would leave that open to see whether
13 there was evidence that came in through Mr.
14 Harmon that would be important for us to get
15 before the jury. We feel that there is.

16 THE COURT: Well, then you're
17 essentially opening up the flood gates so that
18 you can subpoena any insurance agent or
19 insurance adjustor or investigator for an
20 insurance company and--

21 I believe a line of cases still support the
22 fact that ultimately it can be prejudicial or
23 may be, particularly in a case where we're not
24 talking about an auto accident where there's
25 some reasonable reflection upon insurance but

1 liability insurance that attaches to a farmer
2 with some property in a fairly remote area and a
3 variety of things that way. I think the
4 reasoning may be more pervasive if we had two
5 automobiles.

6 MR. DODGE: Well, again, I'm not
7 requesting that the word "insurance" be injected
8 into the case.

9 THE COURT: I understand that.

10 MR. DODGE: Mr. Morgan was arguing that
11 even if it's relevant, he's essentially, I
12 believe, conceding the relevance of the evidence
13 that its probative value is outweighed by its
14 prejudicial value.

15 And I'm saying, in responding to that, I
16 think the prejudicial value or issue of that is
17 overblown and can be mitigated by proper
18 caution, to me, in examining Mr. Harmon, and, if
19 necessary, by proper instructions to the jury.

20 But again, his testimony would be very
21 brief. It would be explaining what he viewed
22 with respect to the fence, with respect to the
23 deer entrails, with respect to a few other
24 things that were simply inconsistent with Mr.
25 Hardman's testimony.

1 THE COURT: Anything further?

2 MR. MORGAN: We incorporated in our
3 argument all the prior arguments that we had
4 made in terms of the work product defense,
5 etcetera.

6 THE COURT: I'll grant your Motion to
7 Quash. It's left with the sound discretion of
8 the Court.

9 I believe that there's-- the probative
10 value is substantially outweighed by the
11 possibility of prejudice or interjection of
12 issues of insurance in the case, which
13 ultimately can either elevate awards or at least
14 may have that possibility.

15 It appears also to the Court that the
16 testimony would be cumulative. Still have an
17 officer or a trooper that was there-- no. Let's
18 see. Excuse me. It's a Deputy County Sheriff
19 that was present on that morning, who made a
20 report, plus a defendant himself who was present
21 on that occasion. So I'll grant y ur Motion to
22 Quash.

23 What else do we need to address before we
24 go to the jury selection?

25 MR. DODGE: So long as we have the

1 opportunity before opening arguments to address
2 some of our similar Motions to Quash for
3 prejudicial effect.

4 THE COURT: We can do that after
5 selecting the jury.

6
7 (This concludes the proceedings requested
8 by counsel of the defendant's Motion to
9 Quash the Subpoena of Robert Harmon to
10 appear at trial in the above-stated case
11 and the arguments of counsel pertaining
12 thereto.)

13 -oOo-

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1 STATE OF UTAH

SS.

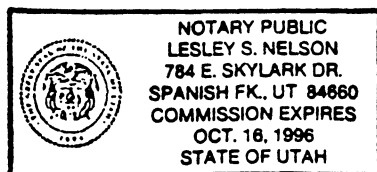
2 COUNTY OF UTAH

3
4 I, Lesley Nelson, do hereby certify that I am
5 an official court reporter in the Fourth Judicial
6 District Court of the State of Utah;

7 That I was present during the entire
8 proceedings in the before-entitled cause;
9 that a partial transcript of the proceedings at
10 which I was present was thereafter, under my
11 direction, transcribed into computer-assisted
12 transcription, and that the foregoing
13 partial transcript constitutes a true and correct
14 report of the proceedings which then and there took
15 place;

16 IN WITNESS THEREOF, I have hereto subscribed
17 my hand and affixed my official seal this 30th day
18 of June, 1993.

19
20 
21 Lesley Nelson, C.S.R.
Utah License No. 200



Lesley Nelson, C.S.R.
784 East Skylark Drive
Spanish Fork, Utah 84660 (801) 798-2868

Tab N

ADDENDUM

Utah Rule of Civil Procedure 26(b)(3) provides:

Trial preparation: Materials. Subject to the provisions of Subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under Subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of this case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

Utah Code Ann. § 41-6-38(3) (1988) provides:

In any civil action brought by the owner, operator, or occupant of a motor vehicle or by their personal representatives or assignees, or by the owner of the livestock for damages caused by collision with any domestic animal or animals on a highway, there is no presumption that the collision was due to negligence on behalf of the owner of the person in possession of livestock.

Tab O

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

-oOo-

JULIA LEE ASKEW,)	
)	
Plaintiff,	)	Deposition of:
)	
-v-	)	Lora Hardman
)	
PAUL HARDMAN,	)	No. 910400665
)	
Defendants.	)	Judge Ballif

-oOo-

Be it remembered that on the 28th day of October, 1992, the deposition of Lora Hardman was taken pursuant to notice, commencing at 9:50 a.m. of said day at 185 South State Street, #1300 Salt Lake City, Utah, before Diana Kent, a Certified Shorthand Reporter and Notary Public in and for the State of Utah.

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1 A. Between what period of time?

2 Q. Between the first incident when the
3 fence was down in the month before the accident and
4 the accident itself.

5 A. I think just that once.

6 Q. Other than fixing the fence and calling
7 Camp Williams, do you know if anything else was done
8 to attempt to prevent trespassing in the vicinity of
9 the pasture?

10 A. Yes. He and I both were opening and
11 checking that area much more frequently than we
12 would normally have done.

13 Q. Tell me what you mean when you say you
14 observed and checked it.

15 A. As I say, we have a bird's eye view from
16 our bedroom window and I can see animal bodies,
17 generally speaking, from there in the winter
18 pasture. I can see more specifically with the
19 glasses, the field glasses, which I do. We had not
20 had, to my knowledge, a lot of trouble in that
21 winter pasture for many years. I mean, a lot of
22 problems in the past. We had had some problems, not
23 consistent problems, but I think that there were --
24 that the problems were becoming more frequent
25 because -- can I speculate here?

1 Q. Well, I'm not sure it does any of us any
2 good other than lengthening the deposition.

3 A. I'm not either. But Salt Lake County,
4 West Jordan, South Jordan, Riverton had closed to
5 hunting and Camp Williams had closed off their areas
6 west of Redwood Road to hunting. And so it built up
7 the deer population and it made more frequent -- I
8 mean, people drive south from Salt Lake City County
9 and the first available hunting area is Camp
10 Williams and our property. So I got the feeling
11 that we were starting to have a little bit more
12 problems down there than we had in the past.
13 Normally, if you checked on the animals every other
14 day in that winter pasture, it was easily
15 sufficient.

16 Q. And did you, during the month of
17 November of '89, check on the horses daily in the
18 pasture?

19 A. Yes. Well, whenever I was at home,
20 yes.

21 Q. Do you work outside of the home?

22 A. Yes, I do, part-time.

23 Q. And where do you work?

24 A. I work for IS, Inventory Specialists.

25 Q. And do you have a schedule for working

Tab P



Tab Q

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH

JULIA LEE ASKEW,
Plaintiff,
vs.
PAUL HARDMAN,
Defendant.

:
:
:
:
:
:
:
:
:
:
:

No. 91-0400665
DEPOSITION OF:
ROBERT HARMON
Judge Lynn Davis

--oOo--

CERTIFIED COPY

BE IT REMEMBERED THAT ON THE 31ST DAY OF DECEMBER,
1992, THE DEPOSITION OF ROBERT HARMON, CALLED AS A WITNESS
HEREIN, IN THE ABOVE-ENTITLED ACTION NOW PENDING IN THE ABOVE-
ENTITLED COURT, WAS TAKEN BEFORE ALISON SELFRIDGE, A CERTIFIED
COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF UTAH,
COMMENCING AT THE HOUR OF 9:15 A.M. OF SAID DAY AT THE LAW
OFFICES OF KIMBALL, PARR, WADDOUPS, BROWN & GEE, 185 S. STATE,
#1300, SALT LAKE CITY, STATE OF UTAH

Reported by:

ALISON SELFRIDGE, CSR, RPR, CM



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1 observed on that morning, the morning of November 21st,
2 is that correct, 1989, as you recall?

3 A. As best as I can recall, yeah.

4 Q. I'll represent that the accident occurred on
5 November 20th, 1989.

6 A. Okay.

7 Q. Your understanding was it was the following
8 morning?

9 A. It was the following day, yes.

10 Q. Tell me what it was you observed when you
11 went to the pasture.

12 A. Okay. Well, I remember driving there.

13 Q. Did you drive your car there?

14 A. No.

15 Q. You drove with Mr. Hardman?

16 A. What is your question? Did I drive
17 Mr. Hardman?

18 Q. Were you driving in the car -- were
19 you riding in the car in which Mr. Hardman was
20 driving?

21 A. Yes.

22 Q. And tell me what you saw as you approached.

23 A. Well, I remember it was -- it wasn't near
24 where Mr. Hardman lived. It was a ways from his house.

25 And we drove on some dirt roads. And we

1 had to go -- first thing we came to a great gate. As a
2 matter of fact, we may have gone through more than one
3 gate, but we went through at least one locked gate. And
4 he had to get out and open it to let us in.

5 And there was a "No trespassing" sign on at
6 least one of those gates. And maybe, like I say, if
7 there was more than one gate, there may have been more
8 than one "No trespassing" sign.

9 And it was a dirt pasture.

10 There wasn't anything particular about the
11 pasture itself, but I was there to look at the fences.
12 I wanted to take a look at the fences.

13 And I remember seeing that in general, the
14 fences were in good repair.

15 I remember seeing some horses, not right
16 where I was, but a ways away, in this pasture area.

17 And I remember seeing a deer kill, or what I
18 assumed to be a deer kill, some kind of animal had been
19 gutted. And its entrails were laying there in the
20 pasture, in the dirt. And they looked to me to be
21 fairly fresh. They didn't look all dried up or
22 anything.

23 And then I remember seeing an area of the
24 fence where the posts were pushed in towards
25 Mr. Hardman's pasture.

1 I remember seeing barbed wire, the type that
2 was on the fences, that was actually inside his
3 pasture.

4 I don't know. I guess that's -- I don't
5 know -- in general, I guess that's about what I saw.

6 Q. You mentioned that in general the fences
7 were in good repair. Which fences are you talking
8 about?

9 A. Well, these barbed wire fences that were
10 running around the pasture. You know, up to the gates,
11 and then away from the gates, and everything.

12 Q. How big was the pasture, do you know?

13 A. I have no idea, but I remember it was a
14 large area. It wasn't a small area.

15 Q. And how much of the fence did you personally
16 observe?

17 A. In length, you mean?

18 Q. Yeah.

19 A. Oh, geez. That would be difficult for me to
20 say, you know. I don't know exactly. I would estimate
21 maybe, golly -- see, because, you know, we drove this
22 one area, then drove to another area. I'd say a couple
23 of hundred feet.

24 Q. You did not personally go around the entire
25 pasture?

1 they located?

2 A. Well, they were in Mr. Hardman's pasture.

3 But as to where they were exactly, I don't recall.

4 Q. They were in the pasture in which the horses
5 were observed?

6 A. Not in the same area. Like I say, I never
7 got close to the horses that I saw, but they were in the
8 area where the fences were pushed in, you know.

9 Q. And were they within the fenced enclosure?

10 A. Oh, yeah, yeah.

11 Q. And your understanding was they were within
12 the same fenced enclosure from which the horses had
13 escaped?

14 A. That was my understanding.

15 Q. Were you able to observe the deer entrails
16 from the place where you observed the fence post pushed
17 in?

18 A. Yes. Yeah, they were all in the same, you
19 know --

20 Q. How far, do you remember?

21 A. I don't remember that, exactly how far they
22 were from the fence line.

23 Q. Was it a matter of feet, or hundreds of
24 feet, or do you know?

25 A. I would say, from my recollection, it would

1 up and started nibbling on it, or anything. It wasn't
2 even dried out.

3 Q. Anything else you can remember about the
4 deer entrails?

5 A. No.

6 Q. And your current recollection won't allow
7 you to recall whether you did, in fact, see a hide or
8 just otherwise concluded?

9 A. Yeah, that's what I've been trying to think,
10 and I'm not certain whether I did or not.

11 Q. And if not, you reached the conclusion based
12 on some other assumption?

13 A. Right, yeah.

14 Q. Or just based on an assumption?

15 A. Right.

16 Q. Okay. Excuse me.

17 A. Yeah. What I was going to say was, my
18 recollection is that it looked like what I saw on the
19 ground in the form of these entrails or guts was that it
20 looked like what I had seen when I saw a deer gutted,
21 you know, by a hunter, you know.

22 I have been on deer hunts, and the first
23 thing you do after you kill your deer is you gut it so
24 the meat won't spoil and stuff. So you open it up, and
25 you take the guts out.

1 And that's what it looked like to me.

2 Q. You mentioned that you noticed posts pushed
3 in towards the pasture.

4 A. Right.

5 Q. Now, describe for me, as best you can recall
6 it, the portion of the fence or pasture where you saw
7 both the wires and these posts pushed in. Describe it
8 in terms of the numbers of posts, how they looked, how
9 the wires were positioned on the ground, or on posts, or
10 whatever.

11 A. Okay. Well, my recollection is -- again, I
12 did refer to these photographs here that we had that
13 were metal posts. And there were two strands of wire.
14 And there was barbed wire.

15 And again, referring to that one
16 photograph that I took close up, there was -- the wire,
17 the barbed wire, each strand was wrapped around the post
18 twice, a double strand. And that there was at least --
19 there was a notch in at least some of the posts where
20 the wire fitted in, I guess so it wouldn't slip up and
21 down.

22 Q. Were you able to observe where -- well, let
23 me start with this: There were two strands of fence
24 (sic.) that you recall?

25 A. That was my recollection, yes.

1 Q. BY MR. DODGE: So the record is clear,
2 Exhibit 1 of your deposition includes a north
3 designation, fence lines, one traveling north and south
4 and one east and west.

5 And you've indicated you're not certain
6 whether the fence was down on the west side where the
7 arrow is or on the north side?

8 A. Right.

9 Q. The "X" you've drawn, basically, is where
10 your memory is of the deer entrails; and the line from
11 the bottom is what you drove on from the south?

12 A. Right.

13 Q. Okay. Thank you.

14 Let me turn to your photographs. And so
15 that we don't have to remark these, these are all
16 exhibits in Mr. Hardman's deposition, Exhibit 23, 24,
17 and 25. And I'll refer to them in that manner.

18 But I'll show you both your originals, and
19 I've got a blown-up version of it, to the extent any of
20 that helps.

21 So let me start with Exhibit Number 23 of
22 Mr. Hardman's deposition and show you the top photograph
23 in that picture. I'll show you first of all your
24 original and then a blown-up version of that.

25 Can you tell me what that picture depicts?

1 A. Well, in this one, I see a double strand of
2 wire around this post on the top, the upper strand. And
3 then there's some barbed wire.

4 The lower strand here is running around, you
5 know, tight around the post there. And then it runs --
6 it runs off from that post. And it looks like at the
7 top of the photograph it's on the ground. It looks like
8 that lower strand is on the ground.

9 And the top strand, it looks like it falls
10 away, too, onto the ground.

11 Here it looks like it goes down onto the
12 ground; and here it looks like it goes down, too, you
13 know. In other words, it looks like the strands meet
14 down here, and that they're right over the top of the
15 ground there. (Indicates.)

16 Q. Do you have a memory of that being the case?

17 A. It's been a long time since I've seen these
18 photographs; so, no, I can't say. I'm just going from
19 what I observed here now, I mean, on this particular
20 post, you know.

21 I can't say, you know, this is the one that
22 I took because I was showing this, or that, or the other
23 thing.

24 But I'm almost positive this is the one I
25 took to show the double strand of wire around the post,

1 because there it is.

2 And then this strand here goes down to the
3 ground. And then this one looks like it meets it down
4 there on the ground.

5 MR. MORGAN: "This," for the record, was a
6 reference to the upper wire and the lower wire.

7 THE DEPONENT: Yeah. They seem to meet down
8 there and then trail right along the ground there at the
9 top of the photograph.

10 Q. BY MR. DODGE: Let me show you next -- this
11 is actually the bottom photograph on Deposition Exhibit
12 24 of Mr. Hardman's deposition. I'll hand you both the
13 blown-up version as well as your original.

14 On that picture, do you have an
15 understanding as to whether the first pole -- the pole
16 in the foreground and the picture that is at the bottom
17 of Deposition Exhibit 24, whether that's the same pole
18 that is depicted in the first picture that is the top
19 one of Mr. Hardman's Exhibit 23?

20 A. I don't have a recollection that they're the
21 same post, but they sure look like it.

22 Q. And to your understanding -- or can you tell
23 me whether or not the direction of that picture is the
24 same direction as the top photograph in Exhibit 23?

25 A. I can't, because I don't know if they're the

1 same post. And I don't recall which direction I took
2 them from.

3 Q. If I were to represent to you that based on
4 other photographs, that is a picture looking east --

5 A. East.

6 Q. -- would that correspond with your memory?

7 A. No. I don't, you know, I didn't -- I don't
8 have a memory of where I was standing when I took these
9 pictures, you know, which direction I was facing or
10 anything.

11 Q. Okay. Does the bottom exhibit of Deposition
12 Exhibit 24, the bottom picture, excuse me, does that
13 also depict wires on the ground?

14 A. It sure looks like it. It sure looks like
15 wires, like the wire comes off. That's why I was
16 thinking maybe it is the same post, because it sure
17 looks like the top wire runs down to the ground and
18 joins -- it looks like it trails off into the ground
19 there.

20 Q. Do you have a recollection as to where
21 precisely along this fence you -- well, let me state it
22 a different way. Were you able to determine that
23 morning where along this fence in your opinion a horse
24 could have escaped from the pasture?

25 A. As far as, like, in the pasture?

1 Q. Well, from the picture -- in other words,
2 were there several places? Was there one place?

3 A. My recollection is that there was just
4 one, you know, just one area where the fence had been --
5 where the fence post had been pushed in and the wire
6 was on the ground. I don't remember a lot of, you
7 know -- well, even more than one area where that was the
8 case.

9 Q. Can you describe for me, based on some kind
10 of a degree of angle or something like that, to somewhat
11 what extent those posts were pushed in, or what angle
12 they were sitting?

13 A. Well, I don't remember that they were all
14 the same. It seemed like some were, you know, bent over
15 more than others.

16 Q. If we assume a post straight up is at a 90
17 degree angle, were some bent as much as a 45 degree
18 angle, meaning halfway to the ground?

19 A. I don't recall any -- that may be. Maybe as
20 much as 45. I don't recall any bent over any more than
21 that. But perhaps, yes.

22 Q. That morning did you observe in any place
23 any what appeared to be horse tracks going through the
24 fence where it was down, or low, or whatever?

25 A. I don't remember any horse tracks, no.

1 Q. Now, with respect to the first picture, the
2 top picture in Exhibit 23, is there anything else you
3 can think of that that picture was intended to depict,
4 or what it does depict?

5 A. No.

6 Q. Same question with respect to the second
7 picture I showed you, the bottom picture in Exhibit 24.

8 A. Let's see. Going back to this one, I guess
9 I've already mentioned what I thought it depicted.

10 And this one, same thing.

11 No. It looks like to me that it was meant
12 to depict the fence post bent in and some wire on the
13 ground, you know, that runs off the post, and it's on
14 the ground there.

15 Q. Let me go to the second picture in
16 deposition Exhibit 23. This is a picture that includes
17 a red arrow. Can you describe for me what that picture
18 was intended to depict?

19 A. Well, when I reviewed -- when I looked at
20 this picture prior to coming here, I thought that this
21 picture would show some barbed wire on the ground. I
22 noticed there's some fence posts here in the
23 background. And I'm not sure where that -- and I think
24 that's why I took this picture is to show barbed wire
25 laying on the ground.

1 Q. At what point did you add the red arrow?
2 A. Well, I would have done that either the day
3 that I took it -- probably the day that I took it,
4 because otherwise I probably would forget about what the
5 heck I was trying to depict in the photograph here.
6 Q. And you carry with you --
7 A. Oh, no.
8 Q. -- little red arrows?
9 A. No. I have them back --
10 Q. At your office?
11 A. -- at my office, yeah.
12 Q. Do you have notes anywhere that would tell
13 you what the red arrow was intended to depict?
14 A. Do I have notes?
15 Q. Yes.
16 A. I don't have possession of any notes about
17 these photographs, you know.
18 Q. Did you make any notes about what the
19 photographs depicted?
20 A. I'm sure I did.
21 Q. When you say you don't have possession of
22 them, that means your employer may, but you do not?
23 A. That's correct.
24 Q. Are you able by looking at that picture, the
25 middle picture in Exhibit 23, to tell me whether the

1 pole that we have looked at in the prior two pictures is
2 depicted in that picture?

3 A. Well, I would say it isn't. And the reason
4 I would say it isn't is because it looks like -- well, I
5 can't say that it isn't. But it looks like the closest
6 photograph -- or the closest pole to this arrow has a
7 white top. And, of course, this pole here in the other
8 photograph doesn't have a white top, but the one next to
9 it.

10 Q. The one behind it further away?

11 A. Yeah, further away. It could be that one.

12 Q. Could be that one?

13 A. But I don't know. I don't recall if
14 it's that one, but it could be. I know it's leaning
15 in. It could be the same telephone pole, or whatever
16 kind of utility pole that is. I mean, it could be.
17 And that could be that same post. In other words, this
18 one and this one. (Indicates.) It could be. I don't
19 know.

20 Q. Anything else about the third picture, the
21 one with the arrow, the middle picture of Exhibit 23,
22 anything else that you can recall?

23 A. No. Just because I put the arrow on -- you
24 know, I remember taking the photographs to show that the
25 property, you know, had a gate, at least one gate, and

1 it was secured. And that the fence was, what I would
2 call, an adequate fence, except where it had been
3 knocked down and the wire had been knocked down. And
4 those were the things I was trying to show.

5 And when I got an arrow pointing to the
6 ground, I figure that's where the strand of barbed wire,
7 at least one strand of barbed wire, was on the ground.

8 And so that's the reason I think I took this
9 photograph.

10 Q. Let me show you what was previously marked
11 as the -- what is the bottom picture in Deposition
12 Exhibit 23 for Mr. Hardman's deposition. That appears
13 generally to be the same picture as the previous one
14 with the arrow but without an arrow, at least close to
15 it. Is that your understanding?

16 I mean, it's not exactly -- don't let me
17 mislead you. Does this appear to be generally the same
18 view?

19 A. Yes. It might be exact except for -- I
20 notice my arrow is pointing to something, and I don't
21 know if that's something on the film, or what it is.

22 Well, let's see. It might be generally the
23 same view. Yeah, it may be.

24 Q. Can you tell me --

25 A. It looks like it's a little further back.

1 Q. Can you tell me what, if anything, that
2 picture is intended to depict other than what you've
3 already described?

4 A. I don't know. I've looked at this one,
5 too. And I was trying to think what in the heck I was
6 trying to show in this. And I don't know, you know,
7 going back.

8 It was '89 when this happened. So I'm going
9 back several -- three years. And I'm trying to think --
10 see, I'm trying to think, okay, when I was there, of
11 course I went to take pictures of the fence. And I
12 wanted to take pictures of anything else that might be
13 important.

14 And I'm thinking, what in the heck is
15 important in this photograph here? And of course,
16 whatever I took a picture of, I would want to center up
17 in the photograph, too.

18 And I don't -- I see -- the only one I can
19 pick out is that there's some indentations it looks like
20 in the ground here. And I don't -- and they run across
21 there. (Indicates).

22 And other than that, it shows where the
23 fence -- the one fence post is leaning in the upper part
24 of the photograph. And I don't know what that is. I
25 don't remember.

1 Q. All right. Let's go to the top picture in
2 Deposition Exhibit 24. No, let's not do that. That's
3 taking us away from the scene.

4 Let's go to the top picture in Deposition
5 Exhibit 25. I'll hand you both your original and the
6 blown-up version of that one.

7 Can you tell me what this picture depicts?

8 A. Well, it shows a fence post leaning in,
9 or leaning off the perpendicular. And I can see a
10 strand of wire, the bottom strand of wire running out
11 from it.

12 I'm not certain -- can't see where that wire
13 is picked up. I lose it because of the brush there. So
14 I'm not sure if it goes down to the ground at that point
15 or not.

16 Then the bottom strand of wire. I can see
17 where the top strand would be wrapped around the post.
18 But I don't -- I don't see it going out from the post,
19 so maybe it's missing.

20 Q. Can you tell me where on the fence line this
21 picture was taken?

22 A. No. I notice there's a utility pole there
23 in the upper left-hand corner. So I don't know if
24 that's the same one, you know, in the other pictures or
25 not. I'm not sure if that's the same utility post or

1 not. If it is, then we've just moved up. But I don't
2 know.

3 Q. Can you determine whether the two posts in
4 the background and the same brush in the background is
5 the same as in the prior pictures from the ones I've
6 just handed you? For example, the middle and the bottom
7 one on Deposition Exhibit 23, whether the sage brush is
8 the same in the clump of sage brush and the two poles
9 right behind it, or near it? I'm trying to get a sense
10 of whether this is the same direction, just stepped back
11 a little bit.

12 A. Well, now that I look at it, it kind of
13 looks that way, because I think this is the utility pole
14 up there. And there's the utility pole really shown
15 clearly in this one. It sure could be, because of the
16 way the post is leaning. It's possible. It's possible
17 that that's the same area.

18 Q. Now, at this point, or at this place in the
19 pasture, were both strands taken down and on the ground,
20 or only one?

21 A. Well, at least in -- at least between two
22 posts I remember no strands, you know, being up, or two
23 strands being on the ground. I don't know if that was
24 the case between an additional set of posts or between
25 adjacent posts, if you understand what I mean. And, you

1 know -- so that's all I can say.

2 Q. At the place you do recall two strands being
3 down, were they completely off the posts, the posts on
4 either side?

5 A. Broken, you mean? You mean separated? Wire
6 is separated?

7 Q. Were they completely -- were they completely
8 unhooked from the posts on the inside?

9 A. My recollection is that I remember seeing
10 wire on the ground. It wasn't broken. In other words,
11 it wasn't snapped, you know. It was still connected
12 wire. It was still a strand of wire. It wasn't broken.

13 Q. It wasn't broken or cut?

14 A. No, it wasn't broken or cut. But it was on
15 the ground. And as to whether it was pulled off of the
16 post --

17 In other words, are you asking whether I saw
18 any posts without wire on it? Is that what you're
19 asking?

20 Q. You mentioned that at least between two
21 posts somewhere along the fence line both strands were
22 down.

23 A. On the ground, right.

24 Q. On the ground. Now, in that area between
25 the two posts, you recall seeing two strands on the

1 ground?

2 A. Right.

3 Q. Does that mean they were completely removed
4 from the pole, they were not attached in any manner,
5 loosely or otherwise to the poles on either side?

6 A. I don't remember whether they were off of
7 the posts on either side at that point, or whether they
8 were just slack, you know, still around the posts, but
9 just slack on the ground. I don't recall that.

10 Q. You mentioned at one point about the wires
11 being inside the pasture, now, in the area where you
12 described both of them being down. Was that the case,
13 that they were inside the pasture in some manner?

14 A. Right. I didn't see any wire that was down
15 on the other side of the fence line outside the pasture.

16 Q. And were both strands on the inside of the
17 pasture?

18 A. Where I saw both strands on the ground, they
19 were both inside the pasture.

20 Q. And how far in the pasture were they?

21 A. In feet, I wouldn't say, like, 10 feet or
22 anything. They were not far away from the fence line,
23 as I recall.

24 Q. Did you observe an end of a fence, in other
25 words, where the wire came to an end?

1 A. Only at the gates, and, you know, in the
2 corner. I mean, that doesn't really come to an end. A
3 fence is kind of continuous.

4 Q. On any given strand of wire that you
5 observed inside the fence, did you see the end of the
6 wire?

7 A. No. I don't remember seeing any wire that
8 was broken or cut or anything. I don't remember seeing
9 that at all.

10 Q. Without assuming that -- I mean, broken or
11 cut, wire has a beginning and an ending place -- was
12 there a place where the wire simply ended because it was
13 at a corner or for any other reason it just simply
14 ended?

15 A. I don't remember taking that close a look at
16 an individual strand of wire, you know what I mean, to
17 see if it ran to a post and then another one started at
18 that post. I don't remember taking that close of a look
19 at it.

20 Q. Let me now turn to the picture that was
21 marked in Mr. Hardman's deposition. It's the middle
22 picture on Deposition Exhibit 24. And I'll show you
23 again both your original and the blown-up version.

24 Can you tell me what that picture depicts?

25 A. Well, it was a gate to Mr. Hardman's

1 pasture. And I'm not exactly sure, you know, where that
2 gate is. As I recall, I went through at least one gate,
3 and maybe more than one gate. And this gate is
4 chained. And I recall a lock being there, because I can
5 remember stopping, and that gate had to be unlocked to
6 get into that pasture. And there is a "No trespassing"
7 sign. It's kind of yellow with a lot of rust on it.
8 These poles around here are kind of yellow.

9 And that's about all I could say, I guess.

10 The fence, looking at it, you know, the
11 fence runs up to it and away from it.

12 Q. Is there anything else about that picture
13 that you can recall or describe?

14 A. No. I am just thinking that the reason that
15 I took it is to show that you couldn't just drive into
16 this pasture. You know, there wasn't -- you have to go
17 through locked gates to get into this pasture. Unless
18 you knocked over some wires and drove over it that way.

19 Q. Okay. Let me show you the top picture in
20 Deposition Exhibit 24, and the blown-up version. And
21 this is a picture of a road with two red arrows.

22 A. Yeah.

23 Q. Can you describe for us the location of this
24 picture, first?

25 A. Well, it's my recollection that this is

1 depict, what you understood at least, to be the point of
2 impact?

3 A. Right.

4 Q. And the top -- and the top arrow was placed
5 there by you intending to depict glass and debris
6 alongside of the road?

7 A. Right. Maybe from a head light or
8 windshield, or something like that from a car.

9 Q. Did you observe the dead horse?

10 A. No.

11 Q. Or the place where the dead horse came to
12 rest, or anything like that?

13 A. I don't recall anything about the horse or
14 anything.

15 Q. Mr. Harmon, is there anything else you can
16 recall about that morning that you observed in relation
17 to the fence, the wires?

18 A. No. I mean, in general, like I say, I
19 observed -- other than this one area where the, you
20 know, the wire was knocked onto the ground and the posts
21 were leaning in toward the pasture, the pasture seemed
22 secure to me.

23 Q. Let me ask you to run through each of the
24 seven pictures we've looked at -- well, six of them, not
25 the last one with the two red arrows -- and tell me

Tab R

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH

JULIA LEE ASKEW,

Plaintiff,

vs.

PAUL HARDMAN,

Defendant.)

)
)
)
)
) Case No. 91-0400665
) (Sur Rebuttal Testimony
) of Paul Hardman)
)
)

January 13, 1993

BEFORE: THE HONORABLE LYNN DAVIS
FOURTH DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff:

Mark F. James
Gary A. Dodge
KIMBALL, PARR, WADDOUPS,
BROWN & GEE
185 South State Street
Suite 1300
Salt Lake City, Utah 84147
Telephone: (801)532-7840

For the Defendant:

Stephen G. Morgan
Mitchel T. Rice
MORGAN & HANSEN
Kearns Bldg., 8th Floor
136 South Main Street
Salt Lake City, Utah 84101
Telephone: (801)531-7888

Reported by: Beverly Lowe RPR/CSR

Center Court Reporting
40 South 100 West
Suite 203
Provo, Utah 84601
Telephone: (801)373-4646

1 P R O C E E D I N G S

2

3 DIRECT EXAMINATION

4 BY MR. MORGAN:

5 Q. Mr. Hardman, you've heard Mr. Knight
6 testify that he went down to the road next to the
7 north fence line and he testified what he testified
8 to about being able to see it. Could you tell us
9 how the road and the fence line worked together or
10 their relationship to one another and how much
11 distance there is at the closest point and whether
12 or not you can see the fence or the wires?

13 A. Yes. May I quickly draw a diagram?

14 Q. Yes.

15 A. As previously stated, and I think we've
16 been through this before, basically the fence line
17 goes like this. There's a gate right here and the
18 road comes along to this gate and then the road
19 turns and goes up towards Camp Williams in this
20 direction. Approximately 60 feet from this gate to
21 the corner here, that's about 200 hundred feet, as
22 I was corrected earlier, from this corner post to
23 this corner post over here.

24 Q. On November 20, 1989 at 4:30 tell us where
25 you were and what observations you made.

1 A. I came along this road here observing the
2 fence line right next to the road, came to this
3 gate. At this point I turned around and went back
4 and observed the fence line from this gate to
5 here.

6 I think they've been led to believe that I
7 was looking at a fence two to three hundred feet
8 away, and it's very simple mathematics. If we take
9 a right triangle, which this is, and we have 60
10 feet on this side and we have 200 feet on this
11 side, knowing these two knowns, we could figure out
12 what the third side is, which happens to be 87
13 feet.

14 Now, if we're standing in a football field
15 from the goal line and go up the 30 yard line
16 that's how far it is, and I think anyone in here
17 could throw a rock 30 yards. And if I can't see a
18 fence in 30 yards then my eyesight is very bad. As
19 I mentioned --

20 Q. How is your eyesight?

21 A. I'm a pilot and you need to have 20/20
22 vision in order to be a pilot.

23 Q. Did you see the fence when you were
24 looking from 60 feet or 20 yards, and did you see
25 the fence line when you were looking to the east,

1 which would have been about 90 feet or 30 yards?

2 A. Yes. From the furthest point up here is
3 approximately 90 feet, give or take a few feet.
4 The closest point would be 60 feet and as you come
5 back the distance gets closer to the fence line.

6 Q. Was there anything that obstructed your
7 vision to the northwest corner of the fence?

8 A. No.

9 Q. When you were there at 4:30 p.m. did you
10 see the posts and the wires?

11 A. Yes, and another corp man. I was out there
12 the evening that Mr. Knight was out there. There
13 was snow on the ground. The wire is silver. When
14 you're looking across the snow, the silver wire is
15 very difficult to see. In November of '89 it was a
16 dry year. There was no snow. The hill is the high
17 point. It's the horizon, you might say, and looking
18 at this angle at the fence at that close of
19 distance with no snow on the ground, very easy to
20 see the wire.

21 Q. Were the posts and wire in place on
22 November 20, 1989 at 4:30 p.m. when you last saw it
23 prior to the accident.

24 A. Yes, sir.

25 MR. MORGAN: That's all.

1 you like to calculate it?

2 A. It may be.

3 Q. So it's actually 208 feet, not 87?

4 A. Okay.

5 MR. DODGE: No further questions.

6 THE WITNESS: I guess the problem of having
7 Mr. Knight, using his calculator. He calculated it
8 for me. I didn't have a calculator so I had him do
9 it. Just can't trust those witnesses.

10 REDIRECT EXAMINATION

11 BY MR. MORGAN:

12 /Q. Well, I guess the bottom line is, when you
13 were there at 4:30 p.m. on November 20, 1989, were
14 you able to see just this area in the northwest
15 corner, and did, in fact, you see it, and were the
16 posts in place and the wire up in that northwest
17 corner, which in fact, would have been about 60
18 feet from where your car was?

19 A. You can see it very easily from this gate.
20 You can see the whole fence line very easily.
21 There was no snow on the ground and it was very
22 easy to see. /And next time I'll figure it myself.

23 MR. MORGAN: That's all.

24 (Conclusion)

25

Tab S

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR

UTAH COUNTY, STATE OF UTAH

-oOo-

JULIA LEE ASKEW,	:	
	:	Civil No. 91-0400665
Plaintiff,	:	
	:	Deposition of:
vs.	:	
	:	<u>KEVIN BUTTS</u>
PAUL HARDMAN and W. RAYMOND	:	
HARDMAN,	:	
	:	
Defendants.	:	Judge Baliff
	:	

BE IT REMEMBERED that on Thursday, the 2nd day of April, 1992, the deposition of KEVIN BUTTS, called as a witness by and on behalf of the defendant in the above-entitled action now pending in the above-named court, was taken before Lisa Collman, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, commencing at the hour of 1:32 p.m. at the offices of Morgan & Hansen, 136 South Main Street, 8th Floor, Salt Lake City, Utah; and

That said deposition was taken pursuant to Notice and Subpoena.

CERTIFIED COPY

LISA COLLMAN
CSR No. 257

INDEPENDENT REPORTING
SERVICE
Certified Shorthand Reporters

1710 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
(801) 538-2333

1 A. It would have been towards Utah Lake, so yes.

2 Q. Are you familiar with any signs that are on the road
3 in the area where the accident occurred as you would approach
4 the point where the accident occurred from the north to the
5 south?

6 A. No. Well, probably. If I drove down I probably
7 would recognize it.

8 Q. Do you recall any of the signs that you would pass as
9 you were approaching the point where the accident occurred?

10 A. Yes, I can recall some.

11 Q. What signs do you remember passing?

12 A. Utah County up on top of the hill.

13 Q. Is that right across from Camp Williams?

14 A. Right.

15 Q. A big sign saying entering Utah County?

16 A. Right.

17 Q. Do you remember any other signs?

18 A. Speed limit 55.

19 Q. So there's a speed limit sign and it's 55 miles per
20 hour?

21 A. It's either 50 or 55. I'm not sure at more, I
22 haven't...

23 Q. One or the other. Do you remember any other signs?

24 A. No. You have your Lehi crossing, which is further
25 down, and then you have all directional signs, I guess.

1 Q. No, just Julie.

2 A. Just Julie, yes.

3 Q. And she was sitting in the front seat?

4 A. Correct.

5 Q. How long had you been with Julie that evening prior
6 to the accident?

7 A. Two hours.

8 Q. Where did you first pick her up?

9 A. At her house.

10 Q. So you would have picked her up around 6:00?

11 A. We didn't leave the house, but it would have been
12 around 6:00 is when I met her, yes.

13 Q. So you went to her house at 6:00?

14 A. Approximately.

15 Q. And how long did you remain at the house?

16 A. An hour, hour and a half.

17 Q. And then after the hour, hour and a half, where did
18 you go?

19 A. Went--well, it was going to be to Utah Lake, but
20 didn't get there.

21 Q. Would it be fair to say that when you left Julie's
22 house you got in the vehicle and drove directly to the point of
23 the accident, intending to go to Utah Lake?

24 A. Yes.

25 Q. How long after you left Julie's house did the

1 accident occur, approximately?

2 A. I'm not sure.

3 Q. Was it within five to 10 minutes?

4 A. No, because you got to go down from--you got to go
5 from Alta to Riverton, which is about 30 miles--or 20 miles, so
6 it would have been about 45 minutes after.

7 Q. Where does Julie live or where did she live at the
8 time?

9 A. What was your address?

10 MR. JAMES: Just tell him the best you know.

11 THE WITNESS: 32 East and 94th South, would be the
12 closest I could give.

13 Q. (By Mr. Morgan) Was there some reason why you left
14 Julie's house?

15 A. Yes.

16 Q. What happened to cause you to leave?

17 A. An argument.

18 Q. And who was the argument between?

19 A. Julie and her mom.

20 Q. And did you hear the argument?

21 A. Yes.

22 Q. And what did you overhear?

23 MR. JAMES: Objection as to relevancy.

24 Q. (By Mr. Morgan) You can still answer.

25 A. It was just a normal childhood--I mean normal argu-

1 Q. The front seat, are they bucket seats or does the
2 seat go all the way across?

3 A. They're bucket seats.

4 Q. Is there a gearshift in between the two seats or is
5 the gearshift up on the steering wheel?

6 A. Why does it matter? Why is this relevant? I'm just
7 curious.

8 Q. Well, the court will determine what is relevant and
9 what isn't relevant. As far as I'm concerned it's either
10 relevant or it may lead to something that's relevant, and
11 therefore that's why I'm asking the question.

12 A. Okay. Then yes, the gearshift's on the--it's a gear-
13 shift on the ground, floor.

14 Q. In between the two bucket seats?

15 A. Correct.

16 Q. Do you recall what you were talking about prior to
17 the accident?

18 A. We weren't.

19 Q. Was the radio on?

20 A. No.

21 Q. How is it you remember you were not talking?

22 A. Because I wasn't.

23 Q. Was she upset?

24 A. A little.

25 Q. At the time the accident occurred what would be your

1 best estimate as to the speed you were traveling?

2 A. 65.

3 Q. Had you looked at your speedometer?

4 A. Yes.

5 Q. And is it on the basis of looking at the speedometer
6 that you're giving me an estimate of 65 miles per hour?

7 A. Yes.

8 Q. When was the last time you looked at your speedometer
9 prior to hitting the horse?

10 A. It would have been a few seconds before I hit the
11 horse.

12 Q. Let me show you what has been marked as Deposition
13 Exhibit 1 and ask you if that's a copy of the written statement
14 that you wrote up for the investigating officer on the evening
15 of the accident?

16 A. Yes.

17 Q. That's your handwriting?

18 A. Correct.

19 Q. Could you just read into the record what it is that
20 you wrote down under "Please describe what you saw, heard or
21 know of this accident"?

22 A. Yes. Driving down road, saw something where, hit
23 something before I knew it. She hit the wind--"she meaning
24 Julie, hit the windshield, bounced back as my car was spinning
25 and landed on my lap.

1 you hit it, did you know it was a horse?

2 A. Not really. I didn't know what I hit when I hit it.

3 Q. Had you applied your brakes prior to hitting the

4 something that you hit, as you best recall?

5 A. I'm not really sure, because I didn't really see any-

6 thing until I hit it.

7 Q. What happened to the vehicle on impact?

8 A. Crushed the whole right side in, the roof. The hood

9 was undamaged but the roof was crushed in.

10 Q. And by the right side do you mean the passenger side

11 of the vehicle?

12 A. Correct.

13 Q. And it did not damage the hood of the vehicle?

14 A. Correct.

15 Q. After you hit whatever it was you hit did you then

16 apply your brakes?

17 A. Yes.

18 Q. Once you came to a stop what did you do?

19 A. I looked around, noticed my car was totally messed

20 up.

21 Q. And was Julie, as you said, on your lap at that time?

22 A. Her head was, yes.

23 Q. What did you do, if anything, for her?

24 A. Checked to make sure she was breathing, bleeding,

25 mostly first aid stuff.

Tab T

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY
STATE OF UTAH

-----ooOoo-----

JULIA LEE ASKEW,	:	
	:	
Plaintiff,	:	Civil No. 91-0400665
	:	Judge Baliff
vs.	:	
	:	
PAUL HARDMAN and W. RAYMOND	:	Deposition of:
HARDMAN,	:	
	:	<u>JAMES BRIERLEY</u>
Defendants.	:	

-----ooOoo-----

BE IT REMEMBERED that on the 9th day of April, 1992, the deposition of JAMES BRIERLEY, produced as a witness herein at the instance of the Defendant Paul Hardman herein, in the above-entitled action now pending in the above-named court, was taken before Ann M. Calder, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, commencing at the hour of 10:00 a.m. of said day at the law office of MORGAN & HANSEN, Kearns Building, Eighth Floor, 136 South Main Street, Salt Lake City, County of Salt Lake, State of Utah.

That said deposition was taken pursuant to Notice.

CERTIFIED COPY

ANN M. CALDER
CSR No. 139

INDEPENDENT REPORTING
SERVICE

Certified Shorthand Reporters

1710 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
(801) 538-2333

1 A. I testified in one civil case that I'm not sure
2 which court it was in. It was in Provo. I don't know if it
3 was federal or district.

4 Q. Were you qualified as an expert witness in those
5 courts in which you testified?

6 A. The only testimony that I gave that was questioned
7 whether or not I was an expert witness was the civil case.
8 And it was agreed upon that the knowledge that I possessed at
9 that time qualified me as an expert in that case.

10 Q. Do you recall who the judge was?

11 A. I don't.

12 Q. With regard to an accident that occurred on November
13 20, 1989, on Redwood Road, near Camp Williams, were you ever
14 asked to do anything in connection with an accident that
15 involved a vehicle and a horse by Officer David Guest, the
16 investigating officer?

17 A. Yes, I was, I was asked to do a drag analysis on the
18 road to come up with a coefficient of friction, see if I
19 could determine the speed of the vehicle.

20 Q. Who made that request?

21 A. Dave Guest.

22 Q. Do you recall when in relationship to the accident
23 he made the request?

24 A. I believe that he made the request the night of the
25 accident. But by the time that everything was taken care of

1 Q. Is that an accepted formula?

2 A. It's a standard formula.

3 MR. JAMES: Objection to the extent that calls for a
4 legal conclusion.

5 Q. (By Mr. Morgan) Let me ask ask it this way: Where
6 did you first learn about this formula?

7 A. In accident investigation school, it's one of the
8 first things they teach you on the patrol. It's a basic
9 formula.

10 Q. For what?

11 A. For determining the speed from the skid marks.

12 Q. So did you use that formula to determine speed from
13 skid marks and drag factor in this case?

14 A. I did.

15 Q. What did you come up with?

16 A. I came up with 71.90 miles per hour minimum speed
17 from skid marks.

18 Q. I note that you did use 160 and 1.08. Would it have
19 made any difference had you used 166 feet instead of 160
20 feet?

21 MR. JAMES: Objection, leading.

22 THE WITNESS: We can figure it out if you want to.

23 Q. (By Mr. Morgan) Why don't you figure it out.

24 A. It would have been 73.24.

25 Q. Miles per hour?

Tab U

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH

-ooc-

JULIA LEE ASKEW,)	
	)	Civil No. 91-0400665
Plaintiff,)	
)	Deposition of:
vs.)	
)	<u>DAVID C. GUEST</u>
PAUL HARDMAN,)	
)	Judge Baliff
Defendant.)	
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-ooc-

BE IT REMEMBERED that on the 16th day of September 1992, the deposition of DAVID C. GUEST, produced as a witness herein at the instance of the Defendant, in the above-entitled action now pending in the above-named court, was taken before Melinda J. Andersen, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, commencing at the hour of 2:15 p.m. of said day, at the offices of Morgan & Hansen, Kearns Building, Eighth Floor, 136 South Main Street, Salt Lake City, State of Utah.

That said deposition was taken pursuant to Notice.

-ooc-

MELINDA J. ANDERSEN
CSR No. 281

INDEPENDENT REPORTING
SERVICE
Certified Shorthand Reporters

1710 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
(801) 538-2333

1 Q At the end of the skid marks, am I correct that
2 it wasn't stopped facing south; is that correct?

3 A It came around 180 degrees and it was facing
4 north again.

5 Q There appear to be two marks on the highway
6 immediately after F to the south where it goes into the
7 opposite lane of travel, and it basically starts going
8 south and then it goes to the east and then kind of back to
9 the south. Do you see those two lines?

10 A Yes.

11 Q What are those supposed to indicate?

12 A That would indicate where the vehicle had
13 rotated 180 degrees.

14 Q Is that something the vehicle did at the end of
15 the skid marks marked by F?

16 A Yes.

17 Q In what direction was the vehicle facing when it
18 came to a final rest?

19 A Basically north, a little northwest.

20 Q What does G and H represent?

21 A G would represent the left front tire of the
22 vehicle. H would be the left rear tire.

23 Q Why did you indicate the left front and left
24 rear as opposed to the right front and the right rear?

25 A Because when we diagram vehicles we try and

1 diagram them on a side where there is no damage or less
2 damage.

3 Q Describe the damage to the vehicle that you
4 observed at the scene.

5 A As I recall most of the damage was to the
6 passenger side of the compartment of the vehicle. The top
7 had been almost sheared back away from the windshield
8 portion of the vehicle.

9 Q Was there any damage on the driver's side?

10 A Not that I recall.

11 Q You indicated the damage was primarily on the
12 passenger side?

13 A That's right.

14 Q What about the front of the vehicle? Where was
15 the damage, all across the front or just on the passenger
16 side or just on the driver's side?

17 A Right corner of the vehicle.

18 Q Just on the passenger side?

19 A Passenger side.

20 Q Then I think you've attempted to describe the
21 hood or the top of the car, not the hood. Can you tell me
22 what damage you observed to the hood of the car and the top
23 of the car, the hood meaning the area under which the motor
24 is located and the top meaning under which where the driver
25 and the passenger would be located? What damage did you

1 observe to the hood and the top of the car?

2 A It's been a long time since I've even seen the
3 tape. I don't really recall the hood, but I know the top
4 of the vehicle was sheared back or separated from the
5 windshield.

6 Q On which side?

7 A On the passenger side.

8 Q But you don't recall at this time damage to the
9 hood?

10 A No, I don't. I'm sure there was some damage,
11 but I don't recall what it was.

12 Q Did you see the horse?

13 A Yes, I did.

14 Q There is an E on Exhibit 4. What does E
15 represent?

16 A E represents where the horse came to rest.

17 Q Did you make a measurement as to how far from
18 the point of impact the horse came to rest?

19 A It would be 60 feet minus the -- no, it would be
20 60 feet, I guess. From A to E is 60 feet five inches to
21 the center of mass of the horse.

22 Q Having looked at the horse could you determine
23 where the horse was hit, like front legs or the back legs?

24 A In my notes in my day planner --

25 Q That would be Exhibit 6?

1 A Right.

2 Q It would be Exhibit 6 you're referring to. I
3 think there is an indication there that says, "Horse (dark
4 brown) was hit in left rear."

5 A Right. That's correct, left rear.

6 Q Does that refresh your memory as to what you
7 observed on the night of the accident?

8 A The horse was laying in a big clump and that's
9 what it appeared to be.

10 Q There is a note John's Towing at the time top of
11 Exhibit 4. What does that indicate?

12 A That indicates the wrecker that came and picked
13 the vehicle up.

14 Q How did you determine who the driver of the car
15 was?

16 A As I arrived on the scene I think one of the
17 deputies handed me Mr. Butts' statement and told me who the
18 driver was.

19 Q Do you remember who that deputy was?

20 A I don't recall.

21 Q You didn't obtain this statement from Kevin
22 Butts yourself?

23 A No, I didn't.

24 Q It was handed to you at the scene by another
25 deputy?

1 A Another officer, yes. I don't recall who it
2 was.

3 Q I wonder if you could read into the record under
4 "Please describe what you saw, heard, or know of this
5 incident" that was written presumably by Kevin Butts.

6 A You want me to read his statement?

7 Q Yes, into the record.

8 A Statement by Kevin Butts says, "Driving down
9 road saw something white. Hit something before I knew it.
10 She hit the windshield, bounced back as my car was
11 spinning, landed on my lap."

12 Q Then at the bottom where it says signature there
13 is the name Kevin?

14 A That's correct.

15 Q Do you recall how long you were at the accident
16 site investigating?

17 A I completed the investigation at 2110 hours,
18 9:10 p.m.

19 Q That in normal time would be what?

20 A 9:10 p.m.

21 Q You were there investigating it from 7:47 until
22 9:10?

23 A Yes.

24 Q That would be about an hour and 23 minutes?

25 A Yes.

1 Q Dan Ferguson was he there with you the whole
2 time?

3 A Yes, he was.

4 Q While you were at the scene did you talk with
5 anyone other than the officers who were at the scene?

6 A Yes, I talked to Mr. Paul Hardman.

7 Q Do you know who was present when you had the
8 conversation with him other than you and Mr. Hardman?

9 A I don't.

10 Q Can you tell me what you recall Mr. Hardman said
11 to you and what you said to Mr. Hardman?

12 A He claimed he had problems with hunters. They
13 were constantly shooting and tearing down his fences and
14 gates. I talked with him and I also talked with his wife
15 separate from him.

16 Q In other words, separate from each other?

17 A I talked to Mr. Hardman. He went somewhere else
18 and then his wife came. I talked to her and I got
19 basically the same response from her. They were cursing
20 the hunters, that they were always tearing down their
21 fences and leaving gates open. It was a constant problem.

22 Q Tell me what your normal practice is with regard
23 to writing in your Franklin day planner with regard to
24 investigating accidents.

25 A Generally when I'm done and I get time to sit

1 down and collect my thoughts, I jot down things that I can
2 remember and things that I feel are important.

3 Q Calling your attention to Exhibit 6, which is
4 what you wrote down in your Franklin day planner. The date
5 is November 20, 1989, which is a Monday. Is that the day
6 you wrote down what appears on Exhibit 6?

7 A Yes.

8 Q This would have been the day after the accident?

9 MR. JAMES: I believe it's the day of.

10 THE WITNESS: The day of the accident.

11 Q (By Mr. Morgan) You would have written this
12 down when?

13 A After I was completed.

14 Q I wonder if you could read then Exhibit 6, which
15 is what you wrote down on the day of the accident, November
16 20, 1989.

17 A You want me to read the whole sheet?

18 Q Yes.

19 A At the top I write 1400. That's the time I went
20 to work. I was the OIC, officer in charge.

21 Q Having written 1400 OIC, that would be 2:00 that
22 day is when you went to work?

23 A Yes.

24 Q Had you written that down before you
25 investigated the accident?

1 A Oh, yeah.

2 Q Then the next thing appears to be 19:20 hours.

3 A I wrote down 1920 hours. That's the time of the
4 accident. Case no. was 06893797. I wrote down 1050 PI.
5 That means a personal injury accident. "State Road 68.
6 Approximately one mile south of Camp Williams. Green 1971
7 Chev Camero. Vehicle's top passenger side was torn back
8 and away. Horse (dark brown) was hit in the left rear. No
9 skids prior to impact only after. All damage to the
10 passenger side of the car. Kevin Butts said neither were
11 wearing seat belts. In conversations with Kevin Butts
12 Kevin Butts said Julie Askew" --

13 Q Before you read on, just tell me when you had
14 the conversation with Kevin Butts.

15 A That would have been at the hospital after I
16 cleared the scene.

17 Q Do you know approximately what time of night
18 that would have been?

19 A I don't.

20 Q You would have cleared the scene at 2110, which
21 would have been 9:10 p.m.

22 A I would have gone directly to the hospital, it
23 probably would have taken ten minutes to get there, another
24 five minutes to locate him.

25 Q What you wrote down here with regard to Kevin

Tab v

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH

-oOo-

JULIA LEE ASKEW,	:	Civil No: 91-0400665
Plaintiff,	:	
vs.	:	Deposition of:
PAUL HARDMAN,	:	<u>AMANDA HARDMAN</u>
Defendant.	:	Judge Lynn Davis

BE IT REMEMBERED that on the 17th day of
December, 1992, commencing at the hour of 9:30 a.m.,
the deposition of AMANDA HARDMAN, produced as a witness
herein at the instance of the Plaintiff herein, in the
above-entitled action now pending in the above-named
court, was taken before Kelly L. Hollenbeck, a Certified
Shorthand Reporter, Registered Professional Reporter and
Notary Public in and for the State of Utah, at the
offices of KIMBALL, PARR, WADDOUPS, BROWN & GEE, 185
South State Street, Suite 1300, Salt Lake City, Utah.

That the deposition was taken pursuant to Notice.

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1 A. Yes. He had called the ambulance, 911, and
2 was also trying to get a hold of her parents.

3 Q. Okay. And did you talk with Kevin Butts?

4 A. Yes. At the time he was trying to get a hold
5 of her parents, and he couldn't get through because it
6 was long distance. And he didn't realize it, and he was
7 very frustrated. And then I asked him what happened,
8 because 911 would be calling back and I needed to know
9 the situation of what was going on to tell them.

10 And he said that he had been driving down the road,
11 and he looked up and saw horses or horses' hooves, I
12 don't remember which, and then he collided with a
13 horse. And then he said he kind of blacked out and
14 didn't remember, you know, what happened between then.
15 But then he just saw that his girlfriend, you know. He
16 looked over, his girlfriend was hurt, and he came to
17 the -- and he was basically fine, from what I could
18 tell, from his agility, and came to the house.

19 Q. Do you remember anything else Kevin Butts said
20 at that time?

21 A. No.

22 Q. And do you remember responding to anything
23 that Kevin Butts said?

24 A. He did ask me -- he still hadn't been able to
25 get a hold of her parents, and I said I would try and

Tab W

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH

--oo0oo--

JULIA LEE ASKEW,)	
)	
Plaintiff,	)	Civil No. 91-0400665
)	
vs.)	
)	
PAUL HARDMAN and W. RAYMOND	)	Deposition of:
HARDMAN,	)	<u>LARRY W. BUTTS</u>
)	
Defendants.	)	Judge Baliff

BE IT REMEMBERED that on Wednesday, the 18th day of March, 1992, the deposition of LARRY W. BUTTS, called as a witness by and on behalf of the defendant in the above-entitled action now pending in the above-named court, was taken before Rachel R. Olson, a Certified Shorthand Reporter, Registered Professional Reporter and Notary Public in and for the State of Utah, commencing at the hour of 10:20 a.m. at the offices of MORGAN & HANSEN, Kearns Building, Eighth Floor, 136 South Main Street, Salt Lake City, Utah; and

That said deposition was taken pursuant to Notice.

CERTIFIED COPY

RACHEL R. OLSON
CSR No. 340

INDEPENDENT REPORTING
SERVICE

Certified Shorthand Reporters

1710 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
(801) 538-2333

1 them really. They were questions of where did the horse
2 come from, how he got ahold of the police and busted down
3 Mr. Hardman's door, which was -- I believe in this case,
4 the child wouldn't let them in, which I understand. I
5 went down to fix the door but they just told me to ignore
6 that.

7 Q. We'll get to that. Try to remember anything you
8 can about the conversation between the American Fork
9 Hospital and the hospital in Salt Lake.

10 A. Nothing really, other than about the accident.
11 I really don't remember a lot about that. I was upset ✓
12 about only one thing, that he pleaded guilty to the
13 speeding charge.

14 Q. Did you discuss that on the way from American
15 Fork to Salt Lake?

16 A. No. He told me he wasn't speeding. He told me
17 that he'd been looking at Julie trying to calm her down.
18 He didn't know where the horse came from. He told me his
19 Camaro was ruined, but nothing really of any real
20 substance as far as the actual events.

21 Q. What hospital did you go to in Salt Lake?

22 A. LDS.

23 Q. I take it that is where you were going?

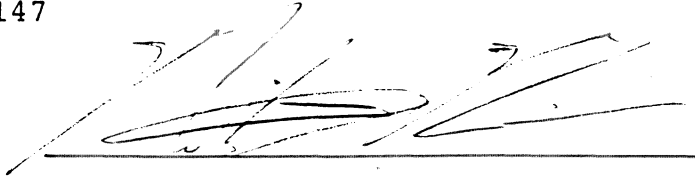
24 A. We knew they were life-flighting her up there.

25 Q. Somebody had told you that?

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of September, 1993, I caused a true and correct copy of the foregoing ADDENDUM TO BRIEF OF APPELLEE to be hand-delivered to the following:

Gary A. Dodge
Mark F. James
KIMBALL, PARR, WADDOUPS, BROWN & GEE
185 South State Street, #1300
P.O. Box 11019
Salt Lake City, UT 84147

A handwritten signature in black ink, appearing to be "M. F. James", is written over a horizontal line.